

THE  
LOCAL GOVERNMENT  
OF  
THE UNITED KINGDOM



BY THE SAME AUTHOR  
AND PUBLISHED BY PITMAN

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OUTLINES OF LOCAL GOVERNMENT OF  
THE UNITED KINGDOM

OUTLINES OF CENTRAL GOVERNMENT,  
INCLUDING THE JUDICIAL SYSTEM  
OF ENGLAND

OUTLINES OF HOUSING AND PLANNING

THE LAW OF HOUSING AND PLANNING

SOCIAL ADMINISTRATION

PUBLIC ASSISTANCE AND UNEMPLOY-  
MENT ASSISTANCE

COUNTY COUNCILS: THEIR POWERS  
AND DUTIES

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THE  
LOCAL GOVERNMENT  
OF  
THE UNITED KINGDOM

BY  
JOHN J. CLARKE, M.A., F.S.S.

OF GRAY'S INN, AND THE NORTHERN CIRCUIT, BARRISTER-AT-LAW  
LEGAL MEMBER OF THE TOWN PLANNING INSTITUTE

*FOURTEENTH EDITION*



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TO THE MEMORY OF  
MY FATHER  
WHO FIRST LED ME TO THAT PATH OF  
CITIZENSHIP  
WHICH I HAVE SINCE  
ENDEAVOURED TO TREAD

## PREFACE

### TO THE FOURTEENTH EDITION

THE immediate disposal of the Thirteenth Edition on publication is encouraging both to the author and to the publisher and justifies the issue of this Fourteenth Edition.

The minimum of alterations have been made, but opportunity has been taken to incorporate the new legislation which has steadily and rapidly been added to the Statute Book since the previous Edition went to press.

In particular, the over-riding effect of the Local Government (Boundary Commission) Act, 1945, has not been forgotten, while the additional legislation with reference to Housing and Planning up to and including the Housing (Financial and Miscellaneous Provisions) Act, 1946, has been incorporated, together with the Water Act, 1945, and the Police Act, 1946.

I have again to thank my various friends who have assisted in passing this, as well as previous Editions, through the press and in preparing the Index.

JOHN J. CLARKE

3 PAPER BUILDING, TEMPLE, E.C.4  
AND  
CARDIGAN CHAMBERS, LIVERPOOL, 2.  
*April, 1947.*

## PREFACE

### TO THE THIRTEENTH EDITION

THE demand for the Thirteenth Edition of this work is a gratifying indication that it continues to meet the need of an ever-widening circle of readers.

In the preparation of this edition an opportunity has been afforded for a complete revision of the text and the incorporation of new legislation, including the Parliamentary Session, 1944.

This volume has been designed to meet the requirements of the general reader and Local Government administrators. At the same time the needs of the students of the London School

of Economics and Schools of Social Science in the provincial Universities have been kept in view. It is hoped, also, that in particular it will prove of assistance to students preparing for the examinations of the Institute of Municipal Treasurers and Accountants (Incorporated), the National Association of Local Government Officers, the Poor Law Examinations Board, the Chartered Insurance Institute, the Incorporated Association of Rating and Valuation Officers, the London County Council Major Establishment Examination; the Final Examination of the Law Society, the Auctioneers' and Estate Agents' Institute, and the Chartered Surveyors' Institution.

The drastic changes which have resulted from the passing of the Education Act, 1944, have necessitated a complete rewriting of the chapter on Education. The new legislation, including the Housing (Temporary Provisions) Act, 1944; the Housing (Temporary Accommodation) Act, 1944; the Town and Country Planning (Interim Development) Act, 1943; and the Town and Country Planning Act, 1944, find their place in their appropriate chapters.

I have again to record my grateful thanks to my friends who have assisted in passing this Edition through the press. Mr. F. O. Lyster, F.S.I., Deputy-Valuer to the West Derby Assessment Area, has again read the chapter on Rating and Valuation. Mr. P. A. Thomson, Town Clerk of the Royal Burgh of Ayr, has again read the chapter on Scottish Local Authorities; and Mr. T. L. Robb, the Burgh Chamberlain of Ayr, has given his attention to the chapter on Scottish Local Government Finance. The chapter on Northern Ireland has been carefully revised with the assistance of my friend, Mr. Victor P. Ward, of the Ministry of Health and Local Government.

In particular, I desire to place on record my grateful appreciation of the services unstintingly rendered by my friends, Mr. H. T. Graham, Secretary for Publications in the University of Liverpool; Mr. A. A. Bellamy, A.R.I.B.A., A.M.T.P.I., of the Architect's Department of the London County Council; and especially Mr. W. J. Parry, A.I.M.T.A., Technical Assistant to the City Treasurer of Liverpool, who has again given the work attention from the viewpoint of the student preparing for the professional examinations, and throughout the initial stages of the work has been a source of invaluable assistance.

Mr. F. Dawson has again undertaken the compilation of the Index, in the preparation of which, including Cases Cited, it has been borne in mind that some members and officials of local authorities and others who do not use the volume as a textbook, make use of it as a work of reference.

It is hoped that this Thirteenth Edition will make its appropriate contribution to the work of reconstruction heralded by the termination of hostilities throughout the world.

JOHN J. CLARKE

3 PAPER BUILDING, TEMPLE, E.C.4  
AND  
CARDIGAN CHAMBERS, LIVERPOOL, 2.  
*July, 1945.*

## PREFACE TO THE TENTH EDITION

It is probably given to few authors to record the fact that in the preparation of the tenth edition of any work he is privileged to have the co-operation and assistance of those friends who helped in the preparation for the press of the first edition.

I record this fact with pleasure, linking up with it my appreciation of the cordial relations which have at all times characterized my relations with my publishers.

The fourteen years which have elapsed since the publication of the first edition of this book has witnessed a revolution in the machinery of local government in the United Kingdom and the Irish Free State. The centenary of the passing of the Municipal Corporations Act, 1835, has been fittingly celebrated and has afforded all interested in local government administration the opportunity of realizing the remarkable change which has been effected by the passing of the Rating and Valuation Act, 1925, the Local Government Act, 1929, the Poor Law Acts, 1927 and 1930, and the Local Government Act, 1933. It but requires the passing of the consolidated Public Health Act to complete the story of the reform in local government administration.

Each succeeding edition has seen an attempt made to improve this work. On the suggestion of my colleagues at the Parliamentary Bar there has been inserted as far as practicable, throughout the text, the relative section of the Acts of Parliament to which reference is made, while the number of cases cited throughout the text has been extended and a Table of Cases added. This, it is believed, will meet the requirements of the new Local Government Law paper of the revised Syllabus of the Law Society.

The chapter on Grants in Aid has been rewritten and extended to meet the needs of the increasing number of students and

readers who require detailed knowledge of this subject. It is believed to be the most detailed study of the subject within the compass of one chapter in any work; and in its preparation and throughout the text, I have again to record the advice and help willingly given by my friend Mr. W. J. Parry, A.I.M.T.A., Technical Assistant to the City Treasurer of Liverpool. To this must be added my grateful thanks to the many friends who have made suggestions which have been adopted as far as practicable, and, in particular, to those named in the Ninth Edition who have again assisted in passing this Edition through the press.

Consequent upon the death of Major G. A. Harris, D.S.O., the chapter on Northern Ireland has been read by Mr. J. B. O'Neill who has succeeded Major Harris as Permanent Secretary for Home Affairs, and to whom I desire to express my thanks.

JOHN J. CLARKE

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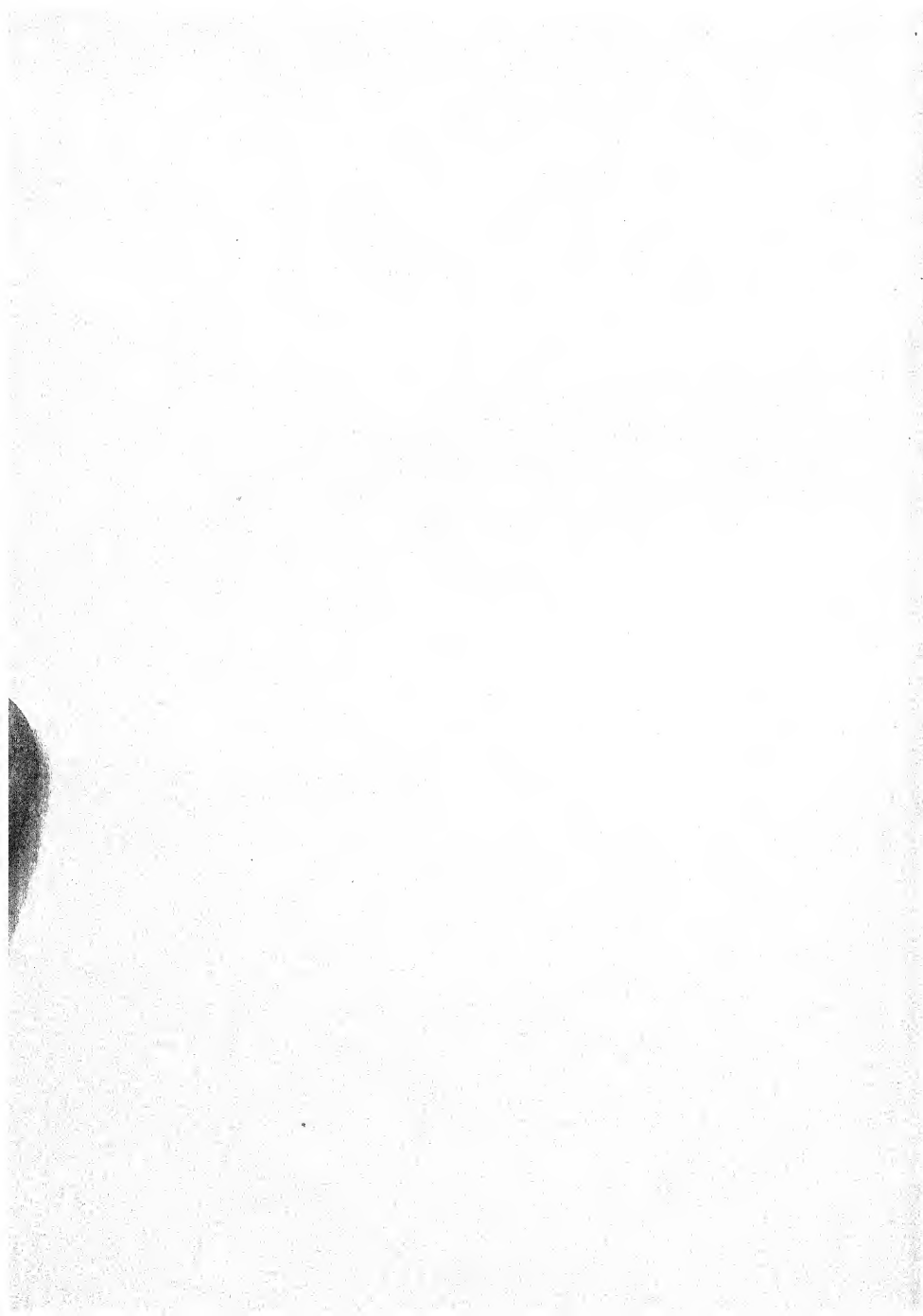
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# THE LOCAL GOVERNMENT OF THE UNITED KINGDOM

## SECTION I THE STATE IN RELATION TO LOCAL GOVERNMENT

### CHAPTER I

#### FUNCTIONS AND PRINCIPLES OF LOCAL GOVERNMENT

THE purpose of this book is to stimulate interest in the duties and responsibilities of citizenship in so far as they relate to local government; and to provide an introduction to the subject for the voluntary and professional worker in local government.

#### DEFINITION

Local Government is that part of the government of a nation or state which deals mainly with such matters as concern the inhabitants of a particular district or place, together with those matters which Parliament has deemed it desirable should be administered by local authorities, subordinate to the Central Government.

The local bodies so charged with the administration of these functions are, in the main, elective.

#### SOURCES OF AUTHORITY

The powers regulating the acts of local authorities are—

(a) *Parliament*, which is the supreme authority and from which all powers are derived. In 1909 the Local Legislation Committee replaced the Committee on Police and Sanitary Regulations in the House of Commons. This Committee examined all local government proposals made by local authorities, except those which might be referred to specially selected committees. This Committee was abolished in 1931 and the Bills of local authorities are now included in two or three groups, with special reference to the personnel of the Committee to whom they are referred, or are taken by the Unopposed Committee.



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(b) *The Common Law*, which includes the unwritten or traditional law of the realm.

(c) *The Constitutions of Local Authorities*. Prior to the passing of the Local Government Act, 1933, these were contained in various Acts of Parliament which set out the method of election and the powers and duties of these bodies. These Acts include the Public Health Act, 1875; the Municipal Corporations Act, 1882; the Local Government Acts, 1888, 1894, and 1929. Other Acts which regulate the constitution of Committees and bodies for certain specific purposes include the Education Act, 1944; the Poor Law Act, 1930; the Land Drainage Act, 1930; the London Government Act, 1899; together with their various amendments. The Local Government Act, 1933, which operated from the 1st June, 1934, gathers into one statute the constitution and methods of election of the councils of counties, boroughs, districts, and parishes. The Act affected London only to a limited extent. It should be observed, however, that matters relating to Police and Justice are left outstanding in the Municipal Corporations Act, 1882.

(d) *The Central Departments of the State*, certain of whose operations are intended to secure efficiency in Local Government administration. They are dealt with in Chapter IV.

(e) *The Judicature*, whose functions are explained in Chapter V.

### LOCAL AUTHORITIES

The result of legislation has been the establishment and co-ordination of local authorities in the following main groups—

1. Under the Municipal Corporations Act, 1835, in Boroughs (other than County Boroughs)—the Borough Council.

2. Under the Local Government Act, 1888.

(a) The County Council.

(b) The County Borough Council.

3. Under the Local Government Act, 1894, in County Areas—

(a) Urban Areas—

The Urban District Council.

(b) Rural Areas—

(i) The Rural District Council.

(ii) The Parish Council and/or Meeting.

4. In London there are special provisions but the principal elected authorities are—

(a) The Common Council of the City of London;

(b) The London County Council; and

(c) The twenty-eight Metropolitan Borough Councils.

### DEFINITION OF LOCAL AUTHORITIES

Care must be taken when dealing with the term "local

authority" to ascertain its meaning for the purpose under consideration. For example, it has several meanings for the purposes of the Local Government Act, 1933. The general definition is "the council of a county, county borough, county district, or rural parish." (Sect. 105.)

It should be observed that a "county district" is a non-county borough, urban district, or rural district.

A LOCAL AUTHORITY, as defined by the Finance Act, 1931, means any body having power to levy a rate, or to issue a precept to a rating authority, and includes the corporation for which any such body acts for executive purposes. (Sect. 32.)

A similar definition is contained in the Local Loans Act, 1875, Sect. 34. A more comprehensive definition is contained in the Local Authorities (Admission of the Press to Meetings) Act, 1908, Sect. 2.

Local authorities are principally—

- (a) Parish Meeting or Parish Council; see Chapter VII.
- (b) Urban District or Rural District Council; see Chapter VIII.
- (c) Borough and County Borough Council; see Chapter IX.
- (d) Metropolitan Borough Council; see Chapter XXX.
- (e) County Council; see Chapter XI.
- (f) *Ad hoc* and Joint Boards, e.g.—

- (i) Port Health Authorities; see Chapter XII.

- (ii) Drainage Boards; see Chapter XV.

- (iii) Catchment Boards; see Chapter XV.

- (iv) Burial Boards, see Chapter XV.

- (g) Joint Committees, including—

- (i) Standing Joint Committees for matters to be determined jointly by the Quarter Sessions and the County Council. The matters include administration of the county police force; see Chapter XVII.

- (ii) Sea Fisheries Committees.

- (iii) Assessment Committees; see Chapter XXVIII.

- (h) Justices of the Peace, who, in addition to their judicial functions, have certain duties appertaining to Local Government. These are referred to in Chapter X.

## INTER-RELATION OF LOCAL AUTHORITIES

The area under each local authority (except the County Council and the County Borough Council) is, broadly speaking, a unit forming a component part of another authority's area. Thus, the parish is contained within the area of a district and an administrative county. The area of a rural district is contained within an administrative county. The area of an urban district or borough is also contained within the area of an administrative

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county. This is shown in a diagram in Appendix II. In addition to the provisions for the prevention of overlapping, powers are given which permit a local authority, if the population of the area increases sufficiently, to advance step by step from the status of Parish Meeting to that of County Borough Council.

The small parish which possesses only a Parish Meeting may apply to the County Council for a Parish Council. The Parish Council in its turn may apply, as the area develops, for an order constituting it an Urban District Council. A Rural District Council, as the district becomes more populous, may also obtain the full powers of an Urban District Council with its larger duties. As a district develops the Council may apply to the King in Council for a Charter of Incorporation, conferring upon them the powers of a borough. It would then be a non-county borough, and when its population becomes sufficiently large the Borough Council may apply to have conferred on it the status of a county borough council. It will then possess the greatest measure of self-government allowed to local authorities in this country.

The Public Health Act, 1936, further affects the relation between County Councils and Councils of County Districts in respect of public health functions. Under this Act the County Council may agree to contribute a sum equal to the whole or part of the expense incurred by the council of a district wholly or partly within the county in connection with sewage or sewage disposal works; or the provision of a supply of water, as appears to them to be reasonable having regard to the resources of the district and other circumstances of the case. (Sect. 307.)

The council of any district may at any time by agreement relinquish in favour of the council of the county any of their functions relating to public health upon such terms and subject to such conditions, if any, as may be specified in the agreement.

#### FRANCHISE AND ELECTIONS

Reforms in the Parliamentary franchise prepared the way for reforms in the Local Government franchise. The plural vote is now obsolete, and the ownership of property as a qualification for registration as an elector has been abolished.

The subject is dealt with fully in Chapter VI.

#### POWERS AND DUTIES

Detailed accounts of the constitution, powers, and duties of

local authorities are given in the separate chapters dealing with the various authorities.

## FUNCTIONS OF LOCAL AUTHORITIES

It would be very difficult to produce a concise classification of the functions of Local Authorities which would satisfy all parties, but the following is an attempt to show in what manner the powers and duties of a large provincial city possessing County Borough status is undertaking its functions, with the names of the appropriate committees—

	<i>Per cent of expenditure</i>
1. <i>Authority under Municipal Corporations Acts—</i>	
Finance, including Assessment and Valuation . . . . .	2.5
Estate (self-supporting) . . . . .	—
Police . . . . .	6.5
	<hr/> 9.0
2. <i>Sanitary Authority under Public Health Acts, etc.—</i>	
Port Health and Hospitals and Institutions . . . . .	16.0
Highways and Bridges . . . . .	6.2
Cleansing and Refuse Collection . . . . .	4.1
Public Health—Miscellaneous . . . . .	7.4
Sewers and Sewerage Disposal . . . . .	2.4
Housing and Planning . . . . .	1.7
Water Supply . . . . .	2.4
Baths and Washhouses . . . . .	1.7
Fire Prevention (Pre-war) . . . . .	1.0
Parks and Gardens . . . . .	2.0
	<hr/> 44.9
3. <i>Trading—</i>	
Markets—Transport—Electricity (self-supporting). . . . .	—
4. <i>Additional Functions—</i>	
Public Assistance . . . . .	13.1
Education . . . . .	17.3
Mental Hospitals and Mental Deficiency . . . . .	2.5
Miscellaneous, including Old Age Pensions . . . . .	13.2
	<hr/> 46.1
	<hr/> <u>100.0</u>

## CLASSIFICATION OF FUNCTIONS

Powers and duties of local authorities are difficult to classify, and it is admitted that any such attempt must be subject to criticism. The following is merely put forward as a suggestion, with a few comments on powers and duties of local authorities within the sphere of each division—

- (1) Legislative.
- (2) Administrative.
- (3) Executive.
- (4) Provision of arrangements for the public safety.
- (5) Provision of institutions for social betterment.

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- (6) Construction and maintenance of works of national benefit.
- (7) Management of quasi-commercial undertakings.
- (8) Administration of certain functions of a national character.
- (9) Laboratories for social experiments.
- (10) Judicial.
- (11) Financial.
- (12) Nationalization of certain local government services.

(I) LEGISLATIVE (including Promotion of, and Opposition to, Bills in Parliament).

(a) Provision must be made for the maintenance of a local legislature with power to make by-laws, e.g. Local Government Act, 1933, Part XII; the Public Health Act, 1875, Sections 183 and 184; the Town Police Clauses Act, 1847.

(b) Power must be given to appoint Executive Officers, to provide equipment for and a system of elections in accordance with the Regulations of the Secretary of State (Home Office).

(c) Local authorities possess the power to sue and the liability to be sued in a corporate capacity in the Courts of Law. Their members and officers are protected by the Public Authorities Protection Act, 1893, as amended by the Limitation Act, 1939.

(d) Promotion of and Opposition to Bills in Parliament.

### (2) ADMINISTRATIVE.

The maintenance of works of public convenience and utility, within discretionary limits, e.g. streets and bridges, including lighting and cleansing thereof, together with the maintenance of sewers and sewage disposal works and the collection of household and trade refuse. Hospitals, institutions, sanatoria and maternity and child welfare centres may be included in this type of work, as well as the provision of houses.

### (3) EXECUTIVE.

The enforcement, through officials who are not allowed much discretion, of the provisions of imperative law, including the care of certain classes of the community within its jurisdiction, including poor persons not otherwise provided for, patients in mental hospitals, mental defectives, inebriates, and also infectious, tubercular, and blind persons.

### -(4) PROVISION OF ARRANGEMENTS FOR THE PUBLIC SAFETY.

This is effected by the maintenance of local courts of civil and criminal jurisdiction and a police force, arrangements for protection from fire by the inspection of buildings, the regulation

of traffic and dangerous trades, and the examination of weights and measures.

(5) PROVISION OF INSTITUTIONS FOR SOCIAL BETTERMENT.

It is further incumbent on local authorities to provide for the establishment of institutions for the development of character, such as educational system, libraries, parks and gardens, museums, art galleries, baths and washhouses, and gymnasias.

(6) CONSTRUCTION AND MAINTENANCE OF WORKS OF NATIONAL BENEFIT.

The construction and maintenance of highways and bridges; the administration of such Acts as the Housing Acts, 1936 to 1946, Town and Country Planning Acts, 1932 to 1944, and the Restriction of Ribbon Development Act, 1935, all tend to the national advantage.

(7) MANAGEMENT OF QUASI-COMMERCIAL UNDERTAKINGS.

The local authorities have for many years undertaken the management of quasi-commercial undertakings, such as markets, waterworks, gas-works, passenger transport, electricity supply, cemeteries, allotments, ferries, savings banks, and airports.

(8) ADMINISTRATION OF CERTAIN FUNCTIONS OF A NATIONAL CHARACTER.

Certain administrative functions under the Acts relating to non-contributory Old Age Pensions. In time of war, food and fuel are of a national character. There has also devolved on local authorities the collection of Road Fund Licence Duties.

(9) LABORATORIES FOR SOCIAL EXPERIMENTS.

The establishment by local authorities of schemes for social experiments has resulted in energetic authorities being enabled to anticipate national requirements. Thus, the experimental appointments of Medical Officers of Health, Nurses in Workhouses, District Nursing, and Maternity Clinics, have all resulted in the expansion into local government services throughout the country.

(10) JUDICIAL.

Certain boroughs maintain their own local Courts of Petty Sessions; Courts of Quarter Sessions have existed since 1360. There still survive, in certain boroughs, Local Courts of Record presided over by the Recorder or, in some instances, under special Act of Parliament a Presiding Judge is appointed for that purpose, e.g. the Liverpool Court of Passage.

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### (II) FINANCIAL.

For the purpose of carrying out their functions, outlined above, power is given to the local authorities to raise money by a system of rating under the Rating and Valuation Act, 1925. For works of a permanent character, loans repayable over a period of years may be raised under general or local Acts of Parliament.

For various reasons dealt with in Chapter XXVI the Exchequer makes certain grants in aid of the cost of local services.

### (12) NATIONALIZATION OF CERTAIN LOCAL GOVERNMENT SERVICES.

The State has created from time to time new functions of Local Government, and is still continuing to do so, e.g. Midwives Act, 1936. On the other hand, there has been the reverse process, e.g. gaols have reverted to the control of the State; the Central Electricity Board has virtually nationalized electricity generation; assistance of the able-bodied unemployed under the Unemployment Act, 1934, is now the duty of the Assistance Board; the nationalization of Trunk Roads and the transfer of Veterinary and Milk Control Services extends the principle further.

### BY-LAWS

By-laws are practically a code of detailed instruction for the application locally of the general principles of law. This code is laid down by a local authority for the guidance of the inhabitants of the area under its control.

A by-law is defined as being an ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory power, ordering something to be done or not to be done, accompanied by some sanction or penalty for its non-observance, and involving the consequences that, if validly made, it has the force of law within the sphere of its legitimate operation. (*Kruse v. Johnson*, [1898] 2 Q.B. 91.)

A by-law must not be *ultra vires*, must not be unreasonable and must be certain (*Robert Baird, Ltd. v. City of Glasgow*, [1936] A.C. 32). In particular, a sanitary by-law must conform to the provisions of the Public Health Act, 1875, and its amendments.

Part XII of the Local Government Act, 1933, deals with by-laws.

Sect. 249 provides that—

(1) A county council and the council of a borough may make by-laws for the good rule and government of the whole or part of the county or borough, as the case may be, and for the prevention and suppression of nuisances therein.

(2) The confirming authority in relation to by-laws made under this section shall be the Secretary of State, except that as respects by-laws relating to public health or to any other matter which, in the opinion of the Secretary of State and of the Minister, concerns the functions of the Minister, rather than those of the Secretary of State, the confirming authority shall be the Minister.

(3) The council of an urban or rural district shall have power to enforce by-laws made by a county council under this section which are for the time being in force in the district or any part thereof.

The *procedure* is laid down in Sect. 250 as follows—

(1) The provisions shall apply to by-laws made by a local authority by virtue of this Act, the Public Health Acts, the Municipal Corporations Act, 1882, the Local Government Act, 1888, and, under certain circumstances, any local Act.

(2) The by-laws shall be made under the common seal of the authority, or, in the case of by-laws made by a parish council, under the hands and seals of two members of the council and shall not have effect until they are confirmed by the confirming authority.

(3) At least one month before application for confirmation of the by-laws is made, notice of the intention to apply for confirmation shall be given in one or more local newspapers circulating in the area to which the by-laws apply.

(4) For at least one month before application for confirmation is made a copy of the by-laws shall be deposited at the offices of the authority by whom the by-laws are made, and shall at all reasonable hours be open to public inspection without payment.

(5) The authority by whom the by-laws are made shall, on application, furnish to any person a copy of the draft by-laws, or any part thereof, on payment of such sum, not exceeding sixpence for every hundred words contained in the copy, as the authority may determine.

(6) The confirming authority may confirm, or refuse to confirm, any by-law submitted under this section for confirmation, and may fix the date on which the by-law is to come into operation, and if no date is so fixed the by-law shall come into operation at the expiration of one month from the date of its confirmation.

(7) A copy of the by-laws must be printed and deposited at the offices of the authority, and shall at all reasonable hours be open to public inspection, and a copy thereof sold to any person on payment not exceeding one shilling.

(8) The clerk of a rural district council shall send a copy of every by-law made by the council, and confirmed, to the clerk



of the parish council or chairman of the parish meeting to which they apply.

(9) The clerk of a county council shall send a copy of every by-law made by the council, and confirmed, to the council of every county district situate wholly or in part in the county. In like manner the clerk of the council of a county district shall send a copy of every by-law made by the council, and confirmed, to the council of the county.

(10) In this section the expression "the confirming authority" means the authority or person, if any, specified in the enactment.

By the Education Act, 1944, school buildings erected or maintained by an education authority may be exempt from local by-laws if the construction or alteration is in accordance with plans approved by the Minister of Education.

## REGULATIONS

These, as distinct from by-laws, are special rules made by a sanitary authority by virtue of particular powers conferred upon it, and are applicable only to a limited area or class of people within its jurisdiction. The power to prescribe a building line beyond which new buildings cannot be erected is a case in point, or the power to make standing orders governing its own proceedings and the conduct of its officials.

## PROMOTION OF AND OPPOSITION TO BILLS IN PARLIAMENT

The law on this subject is now contained in Part XIII of the Local Government Act, 1933, and applies to County, Borough, and District Councils, but not to authorities in the Administrative County of London or to Parish Councils. The provisions legalize the application of public funds to the promotion or opposition of Bills in Parliament other than those for competition with existing gas and water undertakings. Before any action is taken a resolution thereon must be passed by a majority of the whole council at a meeting held after notice thereof has been given by newspaper advertisement, in addition to the ordinary notice convening the meeting. The approval of the Minister of Health is necessary to the resolution. Any elector may give written notice of objection to the Minister. A further council meeting, convened in a similar manner, must be held after the deposit of a Bill, and a similar majority of the whole council is required in order to proceed with the Bill. In the case of a borough or urban district, a public meeting of the electors must be held for the purpose of considering the promotion of the Bill. At the meeting a resolution is submitted in favour of

the promotion of the whole of such Bill, or, if the meeting so desires, resolutions in favour of the promotion of any part or parts or clause or clauses of the Bill, may be put separately. A poll of the electors may be demanded within seven days by notice in writing by one-twentieth of the electors or one hundred electors, whichever is the less. (Local Government Act, 1933, Ninth Schedule.) If the decision of the meeting is against a resolution for the Bill, the council may require a poll of the electors. If the poll is adverse, the Bill or the provision must be withdrawn.

The rules as to meetings and polls of electors do not apply to County or Rural District Councils.

### STATUTORY ORDERS (SPECIAL PROCEDURE) ACT, 1945

The object of this Act is to regulate the procedure to be followed in connection with statutory orders required by any future enactment to be subject to special Parliamentary procedure; to apply such procedure to orders made under certain existing enactments; and to enable such procedure to be applied to certain other orders.

### PRINCIPLES OF LOCAL GOVERNMENT

(1) THERE IS NO STRICT LINE OF DEMARCATION between central and local government; the limitations of each being effected by compromise.

(2) LOCAL AUTHORITIES HAVE NO POWERS except such as are defined by statute.

The specific performance of these powers is enforced. Thus the Local Government Act, 1933, provides power to appoint a receiver where a metropolitan borough council fails to meet a precept. (Sect. 211.)

(3) CO-ORDINATION AND CENTRALIZATION as follows—

(a) Local Authorities derive their powers almost entirely from Parliament.

Exceptional powers must be authorized by special Local Acts, e.g. municipal savings banks.

The Select Committee on Private Bill Procedure (Local Legislation Clauses) issued their Report in 1937. (H.C. 112.)

(b) The Supreme Court of Judicature. Local Authorities and their officers are amenable to the law similarly to other bodies and persons. (See Chapter V.)

(c) The Central Administration under the Central Departments of the State, as described in Chapter IV.

(4) LIMITATION of the powers of rating for specific purposes. These limitations are relaxed in certain instances, particularly to encourage work of social betterment.

(5) PROTECTION is afforded to the citizen from autocratic authority and the member and the official are safeguarded from unreasonable action in the discharge of their duties by the Public Authorities Protection Act, 1893.

(6) VARIETY IN LOCAL GOVERNMENT enables the local community to shape its affairs by undertaking experiments which may afterwards be adopted by the central authority, and extended to the whole country.

### LIMITATIONS OF LOCAL GOVERNMENT

Certain duties of local authorities vary with the class and status of each authority; thus, Parish Meetings are not sanitary authorities; Rural District Councils are not education authorities; Urban District Councils have no separate police force; Non-county borough Councils are not public assistance authorities. The powers of other authorities vary, sometimes by reference to the number of the population, e.g. where an urban district possesses a population of 10,000 the council may be the authority for the control of advertisements under the Advertisements Regulation Act, 1907.

Contracts made by a local authority must be made in accordance with Standing Orders. Such Standing Orders must require, except as otherwise provided in the Standing Orders, the publication of notices and the invitation of tenders; and also regulate the manner in which such notices shall be published and tenders invited. (Local Government Act, 1933, Sect. 266.)

A local authority is not bound by a contract into which it has no power to enter. (*Ashbury Rly. Carriage Co. v. Riche*, 1875, 7 H.L. 653.) It cannot use property for which it has no powers. (*Dundee Harbour Trustees v. Nicol*, [1915] A.C. 550.)

Variations also apply to limitations of powers of rating and borrowing. Thus, the Parish Council cannot exceed a fourpenny rate except with the consent of the Parish Meeting, and then only to the extent of eightpence in the pound, without an Order of the Ministry of Health.

The rating limits were fixed by Acts of Parliament as described in Chapter XXVII.

The exercise of borrowing powers of almost all local authorities is also restricted, being subject to the consent, in some cases, of the County Council and, in almost all cases, of the Ministry of Health, or other appropriate department. (See Chapter XXVII.)

While the areas of the local authorities are defined, the duties of these authorities are not all restricted. Thus, the County Councils exercise functions within some urban areas and within all rural parishes, while Rural District Councils exercise functions within the parishes in their areas.

Local authorities should not provide services which only a limited section of the inhabitants can enjoy. All services should be open for all to participate in without distinction if they have any need or desire.

The Central Government can lay down only general principles. National administrators cannot deal with varying local conditions of which they have no intimate knowledge. Hence, in order that the abstract "state" may be kept in existence to perform its binding and welding functions, Local Government is necessary if the wider general principles are to become essential factors in the individual lives of citizens.

From time to time (especially after periods of national stress) there appears a tendency to limit the function of Local Government and to revert to a system of direct Central Government—a system which in these days often means "Government by Circular." This practice produces friction and irritation with a weakening of local responsibility, which may defeat every purpose of wise government. Responsibility begets caution, and there can be little fear of extravagance where the local authority must find a large portion of its expenditure from rates.

No one but the Attorney-General on behalf of the public has a right to apply to the Court to check the exorbitance of the party in the exercise of the powers conferred on him by the Legislature. (Lord Chelmsford, L.C., in *Ware v. Regent's Canal Co.*, 1858, 3 De G. and J. 212, 228.) The Attorney-General has complete discretion and may refuse to allow the use of his name. (*London County Council v. A.-G.*, [1902] A.C. 165.)

A person may sue for an injunction without joining the Attorney-General—

(1) Where the interference with the public right is such that some private right of his is at the same time interfered with (e.g. where an obstruction is so placed in a highway that the owner of premises abutting on the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway).

(2) Where no private right is interfered with, but the plaintiff in respect of his public right suffers special damage from the interference with the public right. (*Boyce v. Paddington Borough Council*, [1903] 2 Ch. 109.)

The Attorney-General may sue even though the act about to be

done by the authority, although *ultra vires*, is for the benefit of the public. (*A.-G. v. L. and N.W. Rly. Co.*, [1900] 1 Q.B. 78.)

An action for damages may be brought where the authority commits a wrongful act within the scope of its powers, and so injures a private person. (*A.-G. v. Metropolitan Rly. Co.*, [1894] 1 Q.B. 384.)

The exact relations between Central and Local Government provide a field for conflict between the out-and-out "local self-government" school and the "centralizers," the latter wishing to smooth out local inequalities by bureaucratic control and an extension of Exchequer Grants centrally administered. This latter school appears to mistrust local authorities at every turn, and would have them controlled in everything they do. There is a tendency in some quarters to belittle the local authorities and their work, and to ride over them by the action of Government Departments. Local Government is, after all, the birth-right of English political liberty, and it would probably be desirable to encourage administrative ability by attracting a better class of local administrators rather than by centralizing that administration in the Central Departments in London. The local authorities, which are urging that a division of services should be made into "national" and "local," or "onerous" and "beneficial," with a view to making the Exchequer bear a larger share of the burden, may be, therefore, unwittingly tending to bring about the bureaucratic system. The ideal to aim at always is that of freedom for local authorities under sound principles which develop responsibility.

### LIMITATION OF POWERS

The powers of local authorities are, in general, limited to those conferred by Parliament. Some of the statutory powers are adoptive, and the statutes themselves are often directory and not mandatory. The specific performance of statutory duties may be enforced. Wide powers are given to the Minister of Health under Sect. 11 of the Poor Law Act, 1930, to appoint officers upon default of a poor law authority.

The actions of local representatives also pass under review by various methods. In local areas the election pledges made by candidates, either individually or in a group or party, are productive of keen controversy. Often a keen and high-minded opposition can do much to stimulate to action a party which, possessing the control over the management, is reluctant to undertake duties for the improvement of the district on the ground that the expenditure involved is likely to make the party unpopular.

## CENTRAL ADMINISTRATION

Local Government is centralized by (i) the power of Parliament to pass those Acts which it deems prudent to be administered by local authorities; (ii) the interpretation which is put upon those Acts of Parliament by the Courts as to the intentions of the legislature; and (iii) the control exercised by the State Departments which are charged with the duty of enforcing the law as passed by Parliament and interpreted by the High Court.

The Central Departments assist the local administration in various ways. This is done by the numerous officers who discharge various duties on behalf of the respective Departments considered in Chapter IV. These officers are civil servants, subject to the ordinary law of the land, and in this respect differ from the officials of the Continent, who are specially protected by the *droit administratif*. Thus we have—

(a) Inspections of police and police establishments, to ascertain that the standard of efficiency is maintained.

(b) Inquiries relating to borrowing, alteration of boundaries, complaints of administration. Sect. 9 of the Fees (Increase) Act, 1923, enables Government Departments in certain circumstances to charge fees for holding inquiries, not exceeding five guineas per day. (See also Local Government Act, 1933, Sect. 290.)

(c) Statistics which the local authorities are required to furnish. These include financial (including epitome of accounts), sanitary, housing, public assistance, education, judicial, mental deficiency, births, deaths, and marriages statistics.

(d) Audits of certain accounts, e.g. education, by district auditors of the Ministry of Health.

(e) Prescriptions of the duties of local authorities and the enforcement thereof. In the event of failure the Central Department may apply for an order of mandamus in the High Court of Justice. (*Re Nathan, Rex v. Inland Revenue Commissioners*, 1884, 12 Q.B.D. 461.)

(f) Advice respecting new powers and duties is given by means of circulars, either special or general, addressed to local authorities.

(g) The issue of Provisional and Statutory Rules and Orders, or Special Orders conferring powers and obligations upon a local authority. These may be issued by certain Central Departments under powers conferred by Act of Parliament.

(h) Grants in aid of local taxation, which are subject to the fulfilment of certain conditions by the local authority, e.g. one-half of the approved net expenditure on the police is refunded if, on inspection, the force is found to be efficient.

(2) Approval of appointments (e.g. Senior Public Assistance Officers) which constitutes in certain instances, e.g. Road Surveyor, the basis for a claim for financial assistance from the Government.

(7) By-laws subject to approval of the Secretary of State, Minister of Health, or other minister. No by-laws will be approved which are contrary to the general laws of the land.

Central control of local authorities is now a question of paramount importance. The passing of such Acts as the Audit (Local Authorities) Act, 1927 (which has now become Local Government Act, 1933, Part X), and such decisions as that of the House of Lords, 1925, *ex parte* Hopwood (*Roberts v. Hopwood and others*, [1925], A.C. 578), and the case of *Rex v. Minister of Health, ex parte Aldridge*, [1925] 2 K.B. 363, show that the tendency is towards a serious increase in the powers of the central authority with a development of administrative law.

The exercise of these quasi-judicial functions by Central Departments has created much opposition. This is because the House of Lords has held that a Government Department is not bound to adopt the procedure of a court of law and therefore may decide a dispute against an individual without his being heard. (*Local Government Board v. Arlidge*, [1915] A.C. 120.)

The persons who should do the act may be attached as members of the local authority. (*R. v. Poplar Borough Council* (No. 2), [1922] 1 K.B. 95.) The remedy is discretionary. It cannot be demanded as a right, and it will not be given where there is another remedy equally convenient, beneficial, and effectual. (*R. v. Stepney Borough Council*, [1902] 1 K.B. 317.)

## INQUIRIES

In April, 1935, the Prime Minister announced that the King had been pleased to approve the setting up of the following Royal Commissions to undertake—

(1) **TYNESIDE INQUIRY**, under the chairmanship of Sir Sidney Rowlett, to examine the system of local government in the areas and to consider what changes, if any, should be made in the existing arrangements with a view to securing greater economy and efficiency and to make recommendations. The Report was issued in 1937 (Cmd. 5402). There was a majority and a minority Report.

(2) **MERTHYR TYDVIL INQUIRY**, under the chairmanship of Sir Arthur Lowry, to investigate and report whether the existing status of Merthyr Tydvil as a county borough should be continued, and if not, what other arrangements should be made for



its local government, regard being had to its own interests and to those of the surrounding counties and county districts. In January, 1936, the Commission reported in favour of the reduction of the town to non-county-borough status, but owing to subsequent developments no such alteration of status has yet been made.

## COMMITTEES

The work of local authorities is transacted principally by means of committees which are becoming of increasing importance. Local authorities have a general power to appoint committees and to determine the number of members and the term of office. (Local Government Act, 1933, Part III). Standing orders may be made to regulate the proceedings of committees. The Minister of Health issued Model Standing Orders in 1934. The member of a local authority is usually appointed to at least two committees, and he will invariably find that these committees also have sub-committees. Thus a conscientious member of a local authority will find that his time is considerably occupied with the work of the authority. No local authority can delegate to a committee the power of levying, or issuing a precept for, a rate, or of borrowing money. (Local Government Act, 1933, Sect. 85 (1).) Local authorities are entitled to give preferential rates for advertisements to members of Associations. (*Hungerford Market Co. v. City Steamboat Co.*, 3 E. and E. 365.) The remedy for possible abuse of this liberty is to be found in the power of the Court to interfere where a body having statutory powers involving the exercise of discretion exercises that discretion *mala fide*. (See *Short v. Poole Corporation*, [1926] 1 Ch. 66; *Leeds Corporation v. Jenkinson*, [1935] 1 K.B. 168.) Certain committees are statutory, e.g. the Finance Committee of the County Council. Some committees are Joint Committees, e.g. a Joint Planning Committee consisting of members elected by two or more local authorities.

Committees appointed under the Local Government Act, 1933 (other than a Finance Committee), have the power to co-opt persons not members of the local authority, provided that at least two-thirds are elected members (Sect. 85 (3)). Such persons may, and sometimes must, include one or more women, e.g. the Maternity and Child Welfare Committee (Sect. 85 (5)). Appointed members are subject to the same disqualifications as elected members, including the provision with regard to interest in contracts. In most cases the proceedings of committees require confirmation by the local authority, e.g. Health Committee. Other committees merely report their proceedings, e.g. the Watch Com-



mittee of a county borough. (*R. v. Thompson*, 1844, 5 Q.B.D. 477.) To the extent to which the council directs, committees of County Councils are not required to submit their acts and proceedings to the council for approval.

The Standing Joint Committee appointed under Sect. 30 of the Local Government Act, 1888, to deal with matters to be determined jointly by the Quarter Sessions and the County Council, e.g. County Police, consists of an equal number of representatives of the County Justices and of the County Council. Local authorities are given a general power to appoint joint committees for any purpose in which they are jointly interested, and may delegate thereto any of their functions except rating, precepting, or borrowing. Joint committees are frequently established consisting of representatives from two or more authorities for *inter alia* the administration of Mental Hospitals, Inebriates Homes, Sea and River Conservancy, River Pollution, and Town and Country Planning.

A County Borough Council will have practically the same committees as a County Council, but will probably have in addition a Watch Committee. It will also possess committees or sub-committees to deal with its various sanitary duties and trading undertakings. The other local authorities similarly appoint committees and sub-committees, according to the extent and variety of their powers and duties. On the other hand a county borough is not likely to have Agricultural or Small Holdings Committees.

## CO-OPTATION

There is a growing tendency in the direction of co-optation, e.g. the Housing Committee.

Committees with powers of co-optation first appeared in Sect. 56 (1) of the Local Government Act, 1894, under which a parish or district council were empowered to appoint committees consisting wholly or partly of members of the council. The principle was extended by the Education Act, 1902, to Education Committees, and thereafter to: Pensions Committees, under the Old Age Pensions Acts; Insurance Committees, under the National Health Insurance Acts; Local Committees, under the Naval and Military War Pensions, etc., Acts; Maternity and Child Welfare Committees; Public Assistance Committees, and to other committees under various enactments. The principle of co-optation seems to have been established by the desire to secure services from two sources which may or may not be already represented by elected persons, viz. the expert and the

vocational interest, as in the case of teachers on Education Committees; and persons directly affected, as in the case of Allotment Committees, and also to secure the services of those who are experts in one function, but who do not wish to enter fully into the other corporate activities which election to the council connotes.

## JOINT ACTION

Vast improvements in local administration have been secured during recent years by the creation of new organizations based upon the principle of voluntary joint action. Regional schemes are becoming an invaluable, indeed an indispensable, element of modern local administration. Examples are to be found in the Standing Joint Committee of the Metropolitan Boroughs; Joint Town Planning Committees under the Town and Country Planning Act, 1932; and Joint Vagrancy Committees under the Poor Law Act, 1930. Co-operative action can provide improvements in many directions without even the necessity of setting up a Joint Authority. Working agreements may be entered into for the joint user of institutional accommodation, such as for infectious diseases.

## RIGHTS OF ELECTORS

During seven days prior to the audit of the accounts any person interested may at all reasonable times, without payment, inspect the accounts, books, and documents subject to audit. (Local Government Act, 1933, Sect. 224.)

Any Local Government elector may, at all reasonable times, inspect the minutes on payment of a fee not exceeding one shilling; inspect, without payment, any order for the payment of money, or the abstract of the accounts, and make copies and extracts therefrom. The abstract of accounts, and any auditor's report thereon, may be purchased on payment of a reasonable sum. (Local Government Act, 1933, Sect. 283.) This is dealt with more fully in Section VII.

Electors may attend, or be represented at, the audit and make objections. They may be represented by an accountant for such a purpose. (*Norey v. Keep* (1909), 1 Ch. 561; and *R. v. Bedwelty U.D.C.* (1934), 98 J.P. 35.)

No member of the public, not even an elector, has any statutory right to attend a meeting of a local authority or any committee thereof. (*Tenby Corporation v. Mason*, [1908] 1 Ch. 457.)

## CONTRACTS

Sect. 174 of the Public Health Act, 1875, which required the

contracts of urban authorities of a value or amount exceeding £50 to be under seal was repealed by the Eleventh Schedule to the Local Government Act, 1933.

The Local Government Act, 1933, Sect. 266, makes the following provisions in respect of the contracts of local authorities—

1. A local authority may enter into contracts necessary for the discharge of any of their functions.

2. All contracts made by a local authority or by a committee thereof shall be made in accordance with the standing orders of the local authority, and in the case of contracts for the supply of goods or materials or for the execution of works the standing orders shall—

(a) require that, except as otherwise provided by or under the standing orders, notice of the intention of the authority or committee, as the case may be, to enter into the contract shall be published and tenders invited; and

(b) regulate the manner in which such notice shall be published and tenders invited;

provided that a person entering into a contract with a local authority shall not be bound to inquire whether the standing orders of the authority have been complied with.

A member of a local authority having an interest in any contract with the authority, if present at the meeting considering it, must disclose the fact and refrain from taking part in any proceedings in connection therewith under a penalty of £50. A general declaration of such interests may be made.

## ALTERATION OF AREAS

Part VIII of the Public Health Act, 1875, which deals with alterations of areas and the union of districts, has been in great part repealed by the Local Government Act, 1933. A County Council has power to issue an Order under Sect. 141 of the Local Government Act, 1933, subject to confirmation with or without modification by the Minister of Health, to alter or define the boundaries of a parish or divide a parish or transfer part of a parish to another parish or unite one parish with another or form a new parish.

The Local Government Act, 1929, Part IV, provided for a General Review of Local Government areas by the council of every county as soon as may be after the commencement of the Act. The First General Review had to be completed by 1st April, 1932.

Subsequent periodical reviews were provided for. The interval between any two reviews had in no case to be less than ten years. (Local Government Act, 1933, Sect. 146.)

## THE LOCAL GOVERNMENT (BOUNDARY COMMISSION) ACT, 1945

The establishment of the regional Commissioner system during the war gave rise to apprehension that a regionalization of local government might be adopted after the war. In January, 1945, the Government issued a White Paper (Cmd. 6579) on "Local Government in England and Wales during the Period of Reconstruction" in which it was stated that there was no intention of adding such a new "tier" to local government in that manner but that it was felt that some more general and co-ordinated method of altering the status and boundaries of local areas was necessary. The Act gave effect to this proposal by setting up a Local Government Boundary Commission. Five Commissioners are appointed by the Crown. The Minister of Health was authorized to issue Regulations prescribing general principles to be followed. The Commissioners were empowered to deal with all areas but parishes. In case of parishes the existing powers of county councils and the Minister of Health were continued.

The Commissioners may alter the boundaries of all other local authorities including boroughs. They may not deprive a borough of its charter or create a new borough. This remains the prerogative of the Crown. They may reduce a county borough to the status of a borough. An application for county borough status by a borough with a population less than 100,000 must receive consideration as to whether the granting of the application is desirable. No such application from any area in the County of Middlesex can be entertained. An order relating to a County or County Borough is provisional only and requires confirmation by Parliament.

## NEW ASPECTS

Within recent years there have been tendencies at work which have resulted in certain modifications and adjustment of the foregoing principles. These new factors may be summarized as follows—

(1) *By the Local Authorities (Admission of the Press to Meetings) Act, 1908*, representatives of the Press have a right to be present at the meetings of every local authority, unless they are temporarily excluded by resolution of such authority.

(2) *The Principle of Proportional Representation* on the system of the Single Transferable Vote has been introduced for the election of all local authorities in Eire.

(3) *Women in Local Government*. The work described in the following pages is available for women as well as for men. Never before have women had such excellent opportunities to take an

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active part in the work of local government administration. Women, married or single, are eligible for election to all local authorities and may be co-opted for certain work. In particular, co-optation of women became compulsory under the Maternity and Child Welfare Act, 1918.

(4) *Advisory Committees* have become of increasing importance and constitute a valuable liaison between the Central Departments, local authorities, and the public. These are of two classes—

(a) Statutory, e.g.—

(i) Housing Advisory Committees, under the Housing Act, 1936.

(ii) Town Planning Advisory Committee, under the Town and Country Planning Act, 1932.

(b) Non-statutory, e.g.—

(i) Central Water Advisory Committee.

(ii) Mental Health Services of the Board of Control.

(iii) Transport Advisory Council.

### DEFAULT OF LOCAL AUTHORITIES

The power of the Minister of Health to enforce performance of duty by defaulting local authorities was formerly contained in the Public Health Act, 1875, Sect. 299. This section was repealed by the Local Government Act, 1929, Sect. 57 (4), in respect of District and non-county Borough Councils; but is now contained in the Public Health Act, 1936, Sect. 322.

The Local Government Act, 1929, Sect. 57 (3), provides that where it appears to the Minister that the council of any district wholly or partly within a county have made default in discharging certain functions relating to public health which it is their duty to discharge, the Minister may cause a local inquiry to be made into the matter, and

(a) If after such inquiry the Minister is satisfied that there has been such default, he may make a limit of time for the discharge of the function by the council of the district; and

(b) If the function is not discharged by the time limited in the order the Minister may by order transfer to the County Council the function with respect to which default has been made, either for a definite period, or until he may otherwise direct, and the order may apply with such modifications and adaptations, if any, as appear necessary or expedient any of the provisions of the Act relating to the transfer, superannuation, and compensation of officers, and any of the provisions of Sect. 63 of the Local Government Act, 1894.

If it appears to a county council that the council of any county council district within the county have made default in discharging any of their functions under the Public Health Act, 1936, the county council may complain to the Minister and thereupon the Minister shall cause a local inquiry to be held into the matter and if satisfied there has been such failure he may issue an order directing the performance of duty which may be enforced by mandamus. (Sect. 321 and 322.)

There are default powers under various other Acts.

Power is given to the Minister to reduce grants under Part VI of the Local Government Act, 1929, to any council in respect of any year by such an amount as he thinks just—

(a) if he is satisfied either upon representations or otherwise that the council has failed to achieve or maintain a reasonable standard of public health; or

(b) he is satisfied that the expenditure of the council has been excessive and unreasonable; or

(c) the Minister of Transport certifies that he is satisfied that the council have failed to maintain their roads or any part thereof in a satisfactory condition. The Minister must make a report to Parliament. (Sect. 104.)

Action for damages can be brought where the local authority commits a wrongful act within the scope of its powers, and so injures a private person. The most familiar case is where an authority has power to do certain things, but not to commit a nuisance in so doing. The rule laid down in *Metropolitan Asylums Board v. Hill*, 1881 (6 App. Cas. 193), is that if Parliament authorizes the commission of an act and that act cannot reasonably be done without committing a nuisance, then Parliament must have authorized the nuisance. For instance, the use of locomotive engines may reasonably involve the frightening of horses (*R. v. Pease*, 1832, 4 B. and Ad. 30); the destruction of property by sparks (*Vaughan v. Taff Vale Railway Co.*, 1860, 5 H. and N. 679); injury to houses by vibration (*Hammersmith Railway Co. v. Brand*, 1869, L.R. 4 H.L. 171); or nuisance caused by smoke (*A.-G. v. Metropolitan Railway Co.*, [1894] 1 Q.B. 384).

But if the act can be done without committing a nuisance, then it must be done in such a way as not to injure other persons. (*Manchester Corporation v. Farnworth*, [1930] A.C. 171; 27 L.G.R. 709).

## PUBLIC AUTHORITIES PROTECTION ACT, 1893

No action will lie against a local authority for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of

any alleged neglect or default in the execution of any such act or duty or authority unless such action is commenced within six months from the act, neglect, or default, or in the case of a continuing act, six months from the ceasing of the act, increased to twelve months by the Limitation Act, 1939, Sect. 21.

Section 1 applies to a claim by an infant against a public authority. (*Shaw v. London County Council*, [1935] 1 K.B. 67.)

Where judgment in any such action is given for the defendant, the costs must be taxed as between solicitor and client. (*Bradford Corporation v. Myers*, [1916] 1 A.C. 242.)

The Act does not apparently apply to the "prerogative" writs (*R. v. Port of London Authority*, [1919] 1 K.B. 176; *R. v. Carter*, 1904, 68 J.P. 466; *R. v. London County Council*, 1929, 45 T.L.R. 512).

The Act may not apply to actions for injunctions or declarations brought by the Attorney-General. (*A.-G. v. West Ham Corporation*, [1910] 2 Ch. 560.)

The Act does not apply in respect of a private duty arising out of a contract, nor for any negligence in performing a statutory or public duty. (*Sharpington v. Fulham Guardians*, [1904] 2 Ch. 449.)

## OFFICIALS

From the point of view of administration the influence of the permanent officials is important. The Local Government service is, generally speaking, efficiently and adequately staffed. Many of the officials are persons who by experience and training are capable of exercising great assistance in the formation of the policies of the local authorities with which they are connected. This has often been shown in areas where the local authority, under wise and public-spirited leadership, has been able to secure the services of officials of high attainments who have been the means of infusing a more progressive spirit into the local administration. The professional servant furnishes the permanent expert element, giving advice on matters as they arise, controlling the routine work, suggesting the inauguration of experimental schemes, and performing other duties. In many ways, the local government service is becoming more and more attractive as a profession.

The tenure is secure and the prospects of advancement in the service of one or other authority are promising. The case of *Brown v. Dagenham Urban District Council*, [1929] 1 K.B. 737, broadly decided the following legal points: (1) That despite sufficient evidence of the existence of a contract for three months' notice to be given on either side, this contract was of no avail and

the clerk might be dismissed by the council "at their pleasure"; (2) that to constitute a dismissal of the clerk it is not necessary that there should be a resolution of the council; the acts of the council may constitute a dismissal; (3) that as regards the appointment under the Rating and Valuation Act the claim to receive notice failed, since (subject to the resolution of dismissal being *bona fide*) he was liable to be dismissed without notice; (4) that a resolution not passed in good faith may be treated as a nullity by the Court; and (5) that the officer had no right to be heard either before or after his dismissal. The Minister of Health referred the matter to the Royal Commission on Local Government. The decision in the Dagenham case has been modified by the Local Government Act, 1933, Sect. 121, under which a term of the contract of service may provide for notice and existing officers are protected if the terms of appointment purport to include provisions for notice to be given.

An authority may not make retrospective additions to the salary of an officer when it had been definitely fixed. (*In re Audit (Local Authorities) Act*, 1927, and *In re Magrath*, [1934] 2 K.B. 415; 50 T.L.R. 518; 32 L.G.R. 380 (C.A.).)

A DEPARTMENTAL COMMITTEE ON THE QUALIFICATIONS, RECRUITMENT, TRAINING, AND PROMOTION OF LOCAL GOVERNMENT OFFICERS was appointed by the Minister of Health under the chairmanship of the late Sir W. H. Hadow in September, 1930, and issued its report in January, 1934. The committee expressed the opinion that the time had come for considerable revision of the present system of recruitment and training of officers. Under the heading of recruitment, the committee first made some general proposals. All vacancies for the local government service should be widely notified. It was essential, the committee pointed out, for public authorities to avoid any suspicion that appointments were being "jobbed." The rule against canvassing should be strictly enforced. Other points dealt with referred to the following matters—

1. Clerical officers should be recruited at 16 years and should possess the School Certificate.

2. Professional and technical officers should be taken from the best qualified man or woman, whether from inside the service or from outside.

3. Qualifications of Principal Officers. A legal qualification should not always be a condition of appointment as clerk to a local authority, particularly to a large local authority, administrative qualifications being more important.

4. For officers proposing to remain on clerical or administrative



work, an examination would have to be devised, and the committee suggested that local authorities should combine to secure the establishment of an examination on the lines of the Diplomas in Public Administration granted by certain Universities, but of a less advanced standard.

5. An Establishment Committee should be constituted by every local authority to whom should be referred all questions affecting the recruitment, qualification, training, and promotion of officers.

6. A Central Advisory Committee should be set up having amongst its functions the suggested grouping for regional examinations and the co-ordination of discussions with educational bodies.

Such organizations as the Institute of Municipal Treasurers and Accountants (Incorporated), the Poor Law Examinations Board, the Royal Sanitary Institute, the National Association of Local Government Officers, and the Incorporated Association of Rating and Valuation Officers, with their systems of examination, make for efficient administration. The Institute of Public Administration constitutes a common ground for educational study by both the civil and local government services. The Universities of London, Leeds, Liverpool, and Sheffield provide a Diploma in Public Administration. The University of Manchester provides both a Degree and a Diploma.

On 31st March, 1936, the Ministry of Health issued Circular No. 1525 to all local authorities on the Hadow Report, but it has little progressive value.

## SUPERANNUATION

Security of tenure has been extended by the provision for the retirement of officials on pension. Some local authorities secured this power under Private Acts. Other officers have been granted pensions under Acts applying to their service, e.g. Poor Law Officers (Superannuation) Act, 1896; Asylums Officers Superannuation Act, 1925; Police Pensions Acts, 1890 and 1921; Teachers (Superannuation) Acts, 1918 to 1937; Fire Brigades Pensions Act, 1925.

THE LOCAL GOVERNMENT AND OTHER OFFICERS SUPERANNUATION ACT, 1922, was repealed from the 1st April, 1939, by the Local Government and Other Officers Superannuation Act, 1937.

THE LOCAL GOVERNMENT SUPERANNUATION ACT, 1937, embodies the recommendations of the Departmental Committee.

The Act received the Royal Assent on the 30th July, 1937. It will be referred to as the Act of 1937. Although the 1st April,

1939, was the appointed day for the general operation of the Act, local authorities had various duties to carry out preparatory to the full application of the Act.

The administering authorities are the councils of counties, county boroughs, metropolitan boroughs, county districts with 100 or more contributory employees, and local authorities who have adopted the Act of 1922. (Sect. 1.) Two or more administering authorities may combine for purposes of the Act and a joint committee thus becomes responsible. (Sect. 2.)

Local authorities maintaining a fund under a local Act continue to operate their local Act subject to certain modifications provided in the Act. (Sect. 26.)

A municipal corporation has power to make contributions to an employee's superannuation fund conducted in connection with a commercial undertaking carried on by the corporation under statutory powers. (*Armour v. Liverpool Corporation* (1939), 55 T.L.R. 397; 1 All E.R. 363; W.N. 58.)

The administering authorities must maintain a superannuation fund for contributing employees. Contributory employees are the whole-time officers of the councils of administering authorities, county districts, the City of London, joint committees whose constituent authorities consist of the foregoing, and assessment committees. These councils may specify by a statutory resolution such servants or part-time officers as they will make contributors. Any other local authority may pass a similar resolution specifying those of their officers or servants who will become contributors. This extends the provisions to officers of justices in general or quarter sessions, parish councils, port health authorities and catchment and other drainage boards. Registration officers are included, as also are transferred rating and poor law officers with certain modifications preserving former privileges. Managers of voluntary schools may bring in their employees under a statutory resolution.

An officer is an employee whose duties are wholly or mainly administrative, professional or clerical or who receives more than £250 per annum and is not an employed health insurance contributor. Other employees are servants.

The provisions do not apply to those covered by other statutory schemes, such as teachers covered by the Teachers (Superannuation) Acts, 1918 to 1937, and employees under 18 and those 55 and over who have not and cannot complete ten years' service. Superannuable midwives are exempt from this last-mentioned provision. (Sect. 3.) The employees of statutory undertakers, such as water, gas, electricity, and transport services, may be admitted into a superannuation scheme. (Sect. 5.) The adoption

of the Act by the Central Electricity Board and Joint Electricity Authorities is provided for. (Sect. 34.)

Under the Act of 1922 the contributions of officers and servants were at the rate of 5 per cent. Their rate remains unchanged. The rate for all servants is 5 per cent but officers who are new entrants pay 6 per cent. There are special provisions applying to certain transferred rating and poor law officers.

The employing authority contributes an equivalent contribution to that of their employee. (Sect. 6.)

A contributory employee must retire at the age of 65 except where the employing authority extends his service for not more than one year at any time with his consent. Such extended service does not count for an allowance. (Sect. 7.)

A contributor becomes entitled to an allowance after ten years' service if permanently incapacitated, on attaining the age of 60 years after forty years' service, or at 65 after ten years' service. The scale of allowances is one-sixtieth of the average remuneration during the past five years for every year of contributory service and one-hundred-and-twentieth for non-contributory service. The authority may agree to increase the latter rate by any rate up to but not exceeding the contributory rate. Payments may be made to convert non-contributory service to qualify as contributory. An allowance is limited to a maximum of two-thirds the employee's average remuneration. (Sect. 8.)

A contributor may surrender up to one-third of his or her allowance in order to secure a pension to a widow or widower. (Section 9.)

Contributions are returnable with compound interest at 3 per cent if a contributor ceases to be employed before becoming entitled to an allowance. In case of death the legal personal representatives are entitled to payment, but subject to adjustment if the surrender in respect of a spouse has been made. Should the deceased contributor have received an allowance, they are only entitled to the amount, if any, by which the contributions exceed the payment by way of allowance, plus interest. No interest is added if retirement is due to voluntary resignation or inefficiency. Upon dismissal for misconduct or an offence of a fraudulent nature, return of the contributions, without interest, is optional and, in the latter case, payment may be made to the contributor's wife or family. The payment of a transfer value is provided for when a contributor leaves to enter the service of another local authority. (Sect. 10.)

Gratuities, not exceeding twice the value of their annual emoluments, may be paid to employees leaving the service without qualifying for an allowance. Incapacitated contributors,

not entitled to the maximum allowance, may be paid a gratuity to supplement their allowances up to but not exceeding such maximum. Gratuities must not be paid out of the superannuation fund. (Sect. 11.)

There are special provisions relating to female nurses, midwives, health visitors, teachers, clerks of county councils, clerks and deputy clerk of the peace, clerks and assistant clerks to the justices, and registration officers.

Provision is made for actuarial valuations of superannuation funds to be made immediately and periodically. Any amount necessary to maintain solvency must be paid into the fund during a period not exceeding forty years. (Sect. 22.)

Any employee dissatisfied with the decision of his local authority on matters relative to the Act has a right of appeal to the Minister of Health whose decision is final. The Minister may state a case on any question of law for the decision of the High Court and must do so if so directed by the High Court. (Sect. 35.)

LOCAL GOVERNMENT SUPERANNUATION (ADMINISTRATION) REGULATIONS, S.R. & O. 574, 22ND JUNE, 1937. These regulations make substantive the provisional regulations made in December, 1937, with certain amendments.

Clerks to the justices and their whole-time employees are treated as persons in the employ of the local authority.

Local authorities were required to ascertain the status of their employees with a view to discovering to whom the Act of 1937 applies or will apply and to give written notification of their decision to each employee. The time limit for this purpose is six months after appointment and, for existing employees, the latest date was the 21st June, 1938. If a local authority fail to decide these questions within the time provided the Minister may direct them to do so within one month, failing which the Minister may decide the question.

Within three months of the receipt of a notice an employee has a right of appeal to the Minister of Health against the decision of his local authority. The notification must inform the employee of this right of appeal. An administering authority which is not the employing authority has a similar right of appeal against the latter's decision. The provisions are made to apply to optional local authorities who pass the statutory adopting resolution, such as parish councils and drainage boards.

Local authorities are required to keep records of the names and other particulars relating to contributors. The details required are set out in the First Schedule to the Order.

LOCAL GOVERNMENT SUPERANNUATION (ADMINISTRATION) (No. 2) PROVISIONAL REGULATIONS, 22ND JUNE, 1937. These

regulations deal mainly with the relations and financial arrangements between an administering authority and any other local authority interested in the Superannuation Fund maintained by the former.

The employing authority must pay to the administering authority the superannuation deductions and a contribution towards the cost of administering the Fund. In default of agreement the latter sum is to be determined by the Minister of Health. The payments must be made at intervals not longer than yearly and be accompanied by a statement the particulars of which are prescribed in the Order. Arrears carry interest at 5 per cent from a period of one month after the due date.

The employing authority must supply the administering authority with documents supplied by contributors and such information as is necessary for carrying out the Act.

The employing authority is entitled to receive copies of the revenue accounts and balance sheet of the Fund together with any report by the auditor.

Details of the information to be supplied upon payment of transfer values are prescribed in the Order.

A county district council, being an administering authority, must notify the Minister if at any time their contributory employees become less than 100.

Disputes are to be determined by the Minister.

### INTERCHANGEABILITY OF OFFICERS

Proposals for the interchange of officers between the Civil Service and Local Government Services have raised the question of aggregating periods of service. Representations for the setting up of a Joint Committee for the purpose have been made to the Minister of Health and the Treasury by the Local Government Associations. The Unemployment Act, 1934, Sect. 51, has provided a useful precedent in this direction. The interchange of teachers with the dominions and other countries is an established function of education.

The Assistance Board have issued Rules regulating the granting of superannuation allowances to officials previously serving local authorities who have secured appointments with the Board. The period of service and the pensionable emoluments of the official must be placed on record so as to avoid any doubt as to the basis of the pension when due for payment.

THE SUPERANNUATION ACT, 1935, provides for arrangements to be made in respect of benefits payable to civil servants transferred to local authorities and *vice versa*. Treasury Rules have been made codifying the provisions of the Acts with regard

to benefits and allowances. The provisions are to apply to local authorities making application to the Treasury therefor.

### THE IMPORTANCE OF LOCAL ADMINISTRATION

The field of Local Government constitutes a training ground for the National Government. Many of our ablest statesmen and legislators have received their earliest training in the sphere of Local Government, e.g. the late Right Hon. Joseph Chamberlain at Birmingham. The freedom allowed to local authorities influences the Central Government, and this in turn reacts in favour of still further developments in Local Government. Thus the local authorities may become the pioneers in various fields of political activity, more especially in the direction of social and moral improvement. The sphere of Local Government has steadily enlarged. From time to time Parliament has been constrained to delegate extended powers to the local authorities. The number of these functions has increased with almost bewildering rapidity, and emphasizes the urgent necessity of a clear understanding by the citizen of the nature of the subjects committed to the care of the local authorities.

Local interest is secured and maintained by the reports of the meetings of local authorities and certain committees. The liability of members of local authorities for anything said by them at meetings of Councils or Committees is that which attaches to the law of libel or slander. In certain circumstances, however, the law gives a limited protection, and the defendant, when sued, may rely on either or both of the following pleas, viz. fair comment on a matter of public interest, or privilege. Official reports sent to members of local authorities are *prima facie* privileged in the absence of malice.

### WOMEN IN LOCAL GOVERNMENT

The extension of suffrage to women has been a feature of recent years. It is interesting to recall that women, equally with men, were entitled to attend the ancient Vestry Meeting. Under the Local Government Act, 1894, a woman was qualified to be a parish and a district councillor, and under the Qualification of Women (County and Borough Councils) Act, 1907, the qualification was extended to a borough or county councillor or alderman. Under the Local Government Act, 1933, women are qualified equally with men for election to local councils. Women have been co-opted also to serve on various Statutory Committees, such as Education, Old Age Pensions, Naval and Military War Pensions and Public Assistance Committees and upon several committees which were created to meet requirements arising out

of the War. Two women must be co-opted on the Maternity and Child Welfare Committee. (Public Health Act, 1936, Sect. 201 (5).) A woman may be elected mayor or chairman of any local government authority, and may become a Justice of the Peace. This tendency towards a wider representation will, it is believed, produce a fuller appreciation of citizenship. It is only through such development that the individual can realize a sense of the responsibility of citizenship and the State can continue to progress.

### OPPORTUNITIES FOR LOCAL AUTHORITIES

The varied types of authority prevailing in Local Government enable the local community to shape its affairs according to local requirements. An efficient and progressive local authority may engage in social experiments which may have far-reaching effect. Thus, Liverpool appointed the first medical officer of health, and now such an appointment is compulsory for all sanitary authorities. St. Helens experimented with sterilized milk, and the system has been largely adopted elsewhere. Birmingham enlarged its trading activities, established the first Municipal Bank, and created the first scheme for a consolidated municipal loan. In all directions opportunity is given for the development of the work of social improvement, either by relaxation of limitations on spending, or by professional advice calculated to encourage such development. The Central Government, realizing the benefit of such local improvements, may adopt them for national purposes.

### FINANCE

Local authorities obtain the money they require to carry out their duties from four main sources—

(a) Government grants. (b) Loans, which are deferred Rates or Revenues. (c) Specific income, e.g. rents, tolls, fees and licences. (d) Trading profits and payments for services, fees, and fines. (e) Rates.

These matters are dealt with in Section VII.

### ANALYSIS OF EXPENDITURE OF LOCAL AUTHORITIES

An interesting analysis of the distribution of the expenditure of local authorities as between the principal groups of local government services was reproduced in a Ministry of Health Report. This analysis takes the form of a statement showing the percentages of the total amount of rates received for 1928-29 which were applied in meeting expenditure on each of the principal groups of local services. The statement is reproduced below.



Owing probably to the impracticability of apportioning the General Exchequer Contribution among the various services this statement has not been included in subsequent reports.

	Per cent of Total Rates
Education (including public libraries) . . . . .	21.5
Highways and bridges (maintenance, repair, improvement and scavenging, but not lighting) . . . . .	19.6
Health—	
(i) Sewers; removal, etc. of house refuse; water supply; parks; baths; cemeteries; isolation hospitals; vac- cination; salaries of medical officers of health, etc. (so far as not allocated to specific services); port sanitary service; other health services (so far as not included in (ii) and (iii) ) . . . . .	15.4
(ii) Maternity and child welfare; treatment, etc., of tuber- culosis; diagnosis, etc., of venereal diseases . . . . .	1.5
(iii) Lunacy and mental deficiency . . . . .	3.7
	<hr/> 20.6
Housing and town planning . . . . .	1.4
Relief of the poor (excluding maintenance of rate-aided patients in mental hospitals) . . . . .	17.2
Administration of justice; police; fire brigade . . . . .	7.5
Other specific services . . . . .	4.1
Items common to two or more of the above-mentioned ser- vices but not allocated to them in the Returns (general administrative expenses, etc.) . . . . .	8.1
	<hr/>
Total . . . . .	<u>100.0</u>

## GROWTH OF PUBLIC EXPENDITURE

The following table shows the growth of public expenditure from the proceeds of rates and taxes in Great Britain for certain

	Rates Per cent	Taxes Per cent	Total (millions)
1913-14 . . . . .	28	72	£ 257
1928-29 . . . . .	20	80	852
1931-32 . . . . .	17	83	881
1932-33 . . . . .	15	85	976
1933-34 . . . . .	15	85	979
1934-35 . . . . .	16	84	990
1935-36 . . . . .	16	84	1037
1936-37 . . . . .	18	82	970
1937-38 . . . . .	17	83	1053
1938-39 . . . . .	17	83	1120

years from 1913-14. The year 1928-29 is included because that was the "Standard year" under the Local Government Act,



1929, and facilitates an estimation of the effect of the transfer from rates to taxes under the de-rating scheme. The period of the war is omitted owing to abnormal conditions.

### REASONS FOR THE INCREASE

This great increase is accounted for to some extent by three items which did not figure in the returns for the earlier years, viz. War Pensions, Health Insurance, Unemployment Insurance, while Old Age Pensions are five times the amount for 1911.

These figures should not of necessity be taken as a sign of national demoralization, or an indication of the spread of pauperism and dependence. Social workers have too direct an acquaintance with the evils of lax administration and of waste through overlapping to be optimistic as to the effect on the national character of unchecked development of statutory social services. At the same time they realize the benefits that have resulted from the development of Public Health, Education, Health Insurance, and certain other services.

Social services have developed from voluntary work, but the past half century has been especially noteworthy on account of the rapid expansion of public social services. National Education, Public Health, National Insurance, and a host of others are all of this recent growth, and there are some who see in this expansion the key to all further progress. Many authorities regard voluntary work as having been superseded, and all their hopes are pinned on State and municipal action. Others see the public services as the outcome and necessary complement of voluntary work, but not as supplanting it.

Complete dependence on State or municipal provision would destroy progress and very seriously fetter the experimental work which has enabled voluntary bodies to contribute in the past solutions for the evils of the social organism of the State. If these new methods are to be discovered, voluntary work must be preserved and encouraged. The immediate need of the public social services is to transform the passive but reluctant ratepayer into an active worker.

Social and economic legislation has at the moment outstripped the knowledge of the plain man and woman. Many public health provisions are largely inoperative because the public takes no interest in them and does nothing to make them effective. Much of the social service which is linked on to the educational work of the schools is done almost in spite of the parents, and only partly succeeds in the absence of their active co-operation. There is too great a gulf between electors and those who administer the social services. Local authorities must recognize

that they cannot succeed fully without the real co-operation of the people, and must surely see that this is most easily won through those voluntary associations in which this land is rich.

### CONCLUSIONS FOR CONSIDERATION

The figures on page 33 indicate the vast responsibility which is laid on the shoulders of those responsible for their administration. In the financial year ended 31st March, 1935, the nation spent considerably over one million pounds sterling a day on social services. Of every £1 so spent, the taxpayer found 11s. 6d., the ratepayer 2s. 6d., and from other sources 6s. Are we sure that so vast a sum is productive of good for all concerned? Do we contribute these sums realizing that they make or mar the individual? Have they resulted in the development of character and uplifting of the beneficiaries which is, after all, the object to be attained?

Another matter of importance is the question whether the State, both nationally and locally, has reached the limit of its capacity to pay. No one would advance the proposal to reduce or abandon those services which are now provided, and have unquestionably raised the standard of the worker within the last three decades. But, in the end, these services must be paid for, and the industrial worker contributes his full share of the burden equally with the other classes of the community.

Numerous social and economic services, nationally financed, have been introduced and recommended on the ground that they will relieve the rates. But, in spite of National Health Insurance, expenditure on *Public Health and Housing* was—

£82,181,000 in 1940-41 as against  
£13,764,000 in 1913-14

And, in spite of Unemployment Insurance, Widows', Orphans', and Old Age Pensions, War Pensions, and relief works, *Poor Relief* cost

£48,745,000 in 1940-41 as against  
£12,295,000 in 1913-14.

Moreover, *Education* has increased to

£129,267,000 in 1940-41  
from £34,034,000 in 1913-14.

The cost of the *Social Services* increased to

£530,859,000 in 1940-41 as against  
£54,951,000 in 1910-11.

an increase of nearly 850 per cent.

## THE DUTY OF THE CITIZEN

No system of Local Government can be complete which does not secure the whole-hearted support of each individual citizen. Unfortunately, this has not been so in the past. In normal times, at a General Parliamentary Election about 75 per cent of the electorate record their votes, but it is no uncommon thing for a poll of 50 per cent or less to be recorded at County Council and Borough Council Elections. In all branches of Local Government there are fields of service waiting for workers.

A public-spirited person can point out to his neighbours the possibilities of adopting, so far as their means allow, and so far as is suitable to the area in question, one or more of the "Adoptive Acts," e.g. the Public Improvements Act, 1860, to provide village greens and the Lighting and Watching Act, 1833, to light the streets. The Public Libraries Acts, 1892 to 1919, enable County Councils to provide libraries—while a Parish Council can, under the Local Government Act, 1933, provide parish rooms, which can house the library. Again, local authorities, by adopting the Open Spaces Acts, 1875 to 1905, can provide extended facilities for "lungs" within crowded areas. Facilities may also be provided for rational recreation and amusement by music, boating, bowling, lawn tennis, and golf.

It is probably true to say that many men have found greater satisfaction in Local Government administration than at Westminster. Many Acts of Parliament which could help to create a "new Jerusalem" are not in operation because of a lack of an intelligent understanding of the powers which our local authorities possess. Each man and woman should take his or her part in the work, realizing that rights have also their corresponding duties. The performance of these duties will react on the well-being of the community. In this manner it may be sincerely hoped that posterity may never regard the things which this generation has wrought with the scorn with which we frequently consider the chaos of conditions which have been the legacy from the past. If all co-operate to make some nook of God's creation a little happier and blessed, the world will be better for our living. This is the highest form of citizenship, and may be said to be the service and sacrifice which all are called to make in the interest of the Commonwealth. It is for this, among other reasons, therefore, that the attention of the reader of the following pages is directed.

## CHAPTER II

### HISTORY OF LOCAL GOVERNMENT

No human institution is intelligible apart from its historical associations and consideration of the lines of future progress demands that stock should be taken of past developments. There is, therefore, ample justification for some detailed consideration of the history of local government. The growth of our modern and complex system from its comparative rudimentary origin, through the developments which an increasing recognition of the needs of society has produced, will be found to be an interesting and fascinating study. It will come as a surprise to many people to learn that local government to-day can be traced back to Anglo-Saxon days.

#### (A) LOCAL GOVERNMENT BEFORE THE INDUSTRIAL REVOLUTION

**Ancient Origins.** "Not as pirates or warbands," says J. R. Green, "did the English come upon the island, but as a people already fitted by a common temper to become one nation in unity and character."

"And if the history of the Saxon settlements in Britain is not a perfect development of Germanic principles it is the nearest approach to them," says Professor Stubbs. Further, a foreign writer has stated: "Irrespective of their savage cruelty, the English had a manly faithfulness and none of the greed and shamelessness of others who then were invading the Roman Empire." When the conflicts between the Anglo-Saxons and the British began to diminish, the invaders commenced to settle down to cultivate the soil for which purpose they came. The departure of the Romans had left Britain an island of forest, swamp, moorland, and flood. But there are signs of Roman life in roads, villas, gardens, and fields, even outside the cities. The new settlers naturally chose the avenue that forded the stream and forced the forest, and selected convenient places for homes along the various highways of Roman structure, but for a time they left the sites of the Roman cities, such as York, London, Colchester, Winchester, etc., and were instinctively drawn to the hillside, the woodland, and to the river or brook, for sites on which to build their homes. As those pioneers of English life whose descendants were ultimately destined to encircle the

globe, migrated through Britain, with their children, dependants, and cattle, none being left on the Germanic soil, to find a settlement here, they had nothing with which to sustain themselves save their own fiery courage and the crops they cultivated during short intervals of peace.

Two hundred years, from A.D. 449 to A.D. 649, of hard fighting with short periods of home building and clearing of woods occurred before undivided attention could be given to the land. Selection being given to the side of a stream on which to build a mill, there the humble village rose, and there the trees were felled in order to form the field. The line of clearance around the homesteads became the village mark. The owners of the land within the mark were the family, tribe, or nation. As J. R. Green writes: "Harling abode by Harling and Billing by Billing," and each Wick, or Ham, or Tun took its name from the families that dwelt there. The ham of the Billings would become Billingham, and the tun of the Harlings Harlington. Being an agricultural people, and not pastoral, their homes were erected to be permanent, unattached, with granaries, rickyards, cow-houses, reminiscent of the German fatherland, mentioned by Caesar and Tacitus. Each markman lived in his own house, possessed a separate courtyard and farm buildings, and claimed an equal share of the arable land and an equal access to the commons and forests. The best of the land was chosen for arable purposes, and divided into plots, of which each homestead had three strips; one strip alternate by each year lay fallow, while the other two bore the necessary corn. Oxen that equally belonged to the community ploughed the land, and the length of the furrow was required to be 220 yards. This measure survives in the present furlong.

When the Saxon conquerors of Britain carved out the boundaries of our modern shires by their ethnic settlements, when they settled down in their several village communities, they were solving in their fashion—the only one then possible—the future of local government in England. Shire, hundred and township government went on developing under Saxon rule until the progress of political events demanded strong central government, and the time came when many of the powers of local government passed to the central authority. The Norman conquest marks very strongly the date of this surrender.

The local and national affairs in early England were not relegated to a favoured few, but were settled in the councils of the people in their several moots, or meetings. Every man, but the absolute slave, bore arms, and that gave him a right in the national control. Being an occupier of land he had that which

needed defending, and gave him a reason for being a ready fighter as well as a ready worker. His readiness to defend attested his political rights, and the ringing shouts of assent or dissent he gave in the moot, emphasized with the clash of his arms, sword, spear, dagger, and shield, expressed his readiness for all who would interfere with his ancient freedom.

Of the councils, the first was the Township Moot, of which the present Parish Council appears as a belated revival. Then followed the Hundred Moot, where each village had a voice in the common concerns as in the present District Council. Higher still was the Shireage Moot, where all general questions were considered that affected a wider area, as with the present County Council, while the Council of the Witan in the Witanagemot attended to things more supreme and was the precursor of the King's Privy Council. To the Shireage Moot the Hundred Moot would send as representative its reeve, four "best men," and the priest.

From a military organization sprang the civil institution. On the ground won by battle there first rose the military camp, on part of which commenced the village, and the hundred warriors, without being precise in the exact number, became the hundred villagers, and would assemble in the Hundred House for village purposes, to be presided over by the *Ealdorman*. But more frequently it was a parliament in the open air and reminiscences of those alfresco gatherings, says Professor Stubbs, survive in the places where they met, as in the names of towns and villages, e.g. Tynwald in the Isle of Man. Often a tree was the landmark for the meeting, and Appletree and Edwinstree in Hertfordshire, Webbtrees and Grytrees in Worcestershire, and Doddingtree in Leicestershire may be regarded as mementos of those primitive and rural parliaments. Often a cross was the attractive position for the moots, as seen in Osgodcross, Ewcross, and Staincross. But the cross introduces a later period when another factor, the acceptance of Christianity, was potently moulding the nation.

The Hundred. There is considerable obscurity as to the origin of the territorial divisions known as the hundred, although, as stated above, it may have sprung from the name of the area which provided a hundred warriors. It may have been the area formed by one hundred "hides" or strips of land. In northern counties it went by the Scottish name of a "Ward." In north-eastern counties it was known as the "Wapentake" or "weapon touching"—sign of allegiance. The territorial nature of the division meets us in the peculiar use of the word *shire*. In Yorkshire we have Richmondshire, Riponshire, Hallamshire,

Islandshire, Norhamshire, and it is very much beyond historical proof that the next higher local division to the township was originally known as shire. In the early history of Local Government the place of the hundred was immediately above the township, the union of a number of which were for the purpose of judicial administration, peace, and defence. The oldest aspect of the hundred is military, and this has lasted down to our own days. It is very probable that the colonists of Britain arranged themselves in hundreds of warriors, and, in later ages, the new territorial hundred was the basis upon which military levies were made. The early historical significance of the hundreds is to be tested by a comparison of it with the Wapentake. A law of Ethelred II is at great pains to define the constitution and functions of the gemote or judicial assembly of the wapentakes of the north of England, yet there can be little doubt of the existence of the wapentake court long before the time of that monarch.

The wapentake answers in every respect to the hundred, but its northern terminology is much more expressive than that of the southern hundred. All the judicature lying outside the village system was centred in the hundred. It was entitled to declare folk-right in every suit; its jurisdiction was criminal as well as civil, and voluntary as well as contentious. It tried criminals, settled disputes, and witnessed transfers of land.

The remaining feature of the hundred-court is the executive. As a civil and criminal court of justice its judicial capacity was, no doubt, in the early times very extensive. No suit could be taken to higher court until first it had been tried in the hundred-court. The court was held once a month, and was attended by all the fully qualified freemen.

**The Township and Burh.** The "tun" or township was the "tunscip"—the unit within the hedge which screened off a community. The burh (borough) was the fortified town, so necessary as a place of refuge from the sudden attack of outside foes. At a later stage, the ecclesiastical unit—the parish, or place whose inhabitants were under the care of a single priest—became an important unit of local government. It is interesting to observe that after so many centuries of reaction and progress there has been a return to territorial division almost identical in character with those of the Saxon period. The ancient shire, hundred and township have their counterparts in the modern county, district and parish. There are two important points of contrast, however. Population was then meagre and diffused and the ancient "folk-gemot" of the fifth century was a meeting of all freemen. The great increase of population and the segregation of people into large industrial centres has necessitated elected representative



assemblies. In the second place both executive and judicial functions were exercised by the folk-gemot, whereas modern principles strictly divide these two functions. The sphere of local government was not large in those days. New settlers had to be admitted, by-laws made for the common weal, officials appointed, stolen property recovered, fugitive criminals apprehended and provision made for the collection of the King's taxes and Church dues. The freemen were liable for military service, the maintenance of bridges, causeways, and seawalls, and the repair of fortifications. The president of the folk-gemot was the King's Reeve.

**The Frankpledge System.** The Frankpledge was, under the Saxon constitution, an association of ten men who were to be standing securities for the community, bound to produce any one of their number if called upon by the law to do so, and, in default, liable to pay for what he had done amiss unless they could purge themselves from all complicity in the matter. The Frankpledge may be regarded as a sort of artificial prolongation of the family tie, or, as based on the principle of the law of Athelstan, that every man should have a security for him.

Inhabitants were required to produce evildoers to answer for their misdeeds, or themselves to satisfy the claims of those who suffered damage. All were required to find surety—the landed proprietor was guaranteed by his estate, and was responsible for the good behaviour of his servants. Men who were free from servitude had to find other surety, and those who failed to do so were outside the protection of the law, and suffered other disabilities. Free men were, therefore, compelled to combine for mutual security and protection, and they formed themselves into what became known as "tythings," electing one of their number as their representative, who was responsible to the community for the good behaviour of its members, and for bringing to justice felons and disturbers of the public peace. This organization was known as the "Frankpledge" system, frankpledge meaning the surety for the maintenance of the peace demanded by the King from all free Englishmen in return for the national protection afforded by his government. The representatives of these tythings or townships were variously styled "Tythingmen," "Borsholders," "Headboroughs," or "Third-boroughs."

This early Saxon police system was developed in the tenth century by King Edgar, who instituted the "Hundred," consisting of ten tythings for police purposes, under a responsible head known as the "Hundredman," to whom Tythingmen, Borsholders, etc., were responsible for the good order of their



several townships or districts, all being responsible for the discharge of their duties to the Shire-reeve (Sheriff), who controlled the police and was responsible for the maintenance of the peace in his county. The Saxon system was continued by the Norman, but there was apparently considerable laxity in bringing evil-doers to justice for some time after the Conquest, as in Magna Carta we find that it was provided that "the view of the Frankpledge shall be so done that our peace may be kept, and that the Tything be wholly kept as it hath been accustomed."

**The Norman Conquest.** When William the Norman came to these shores he found strong local centres of power. He swept away the folk moots. The townships became the "vill" or village. The shire-moot was displaced by the Manor Court over which the steward ruled as the representative of the Lord of the Manor. The decisions of the Court were executed by the bailiff. Sometimes there was more than one bailiff and in such cases there was a major bailiff or just "major," from which is derived the name of "mayor." The manor frequently devoured several ancient boroughs.

William did not sweep away all these local institutions, however, but gave some of them charters and taught them to believe that the sovereign was the source of all their legal authority.

The hundred-courts were not only not abolished, but were directed to be held regularly, and non-attendance upon them was punished by fines. Moreover, the sheriff's tourn and leet, as it was called, a court which for so long exercised the same kind of criminal jurisdiction as that now vested in the magistrates, was but the hundred-court under another and less popular name. Yet these courts rapidly lost their importance, partly because they were superseded by the county courts, and partly because so many franchises, or rights of private jurisdiction, had been attached by grants to lordships as greatly to reduce and obstruct the business of the smaller and popular courts.

The Local Government Act, 1894, constituted the district council as the successor of the hundred-court.

The peace of the land became the "king's peace." The law became the "king's law." Justice became the "king's justice."

The courts became the "king's Courts," and the judges who sat there became the servants of the crown in theory, if not in fact. All the local jurisdiction leaned towards the central powers. Lords of manors, with the old rights of "sac and soc," surrendered their lands and had them regranted, or they forfeited them, which became the actual regrant of the sovereign to faithful adherents and followers. The link which joined the Saxon and Norman regime was the sheriff.

**The Sheriff.** The precursor of the sheriff is to be sought not among the early heads of shires, but in the ranks of the king's reeves, a class of officials whose administrative rank was inferior to the aldermen. From Edward the Elder to Canute the studied policy was to raise the judicial status of the king's reeve. In the laws of the former king the reeves enforced folk right, saw that each plea had a term, and gave judgment according to the testimony of witnesses in the meeting of the *gemot*, an assembly distinct from the *shiremote*. At a later date in the pre-Norman period, the *gerefan* held folkmotes, enforced law and maintained order, but his duties were not yet clearly distinguished. Among those named *rican gerefan* at that time, the administrators of subdivisions of the shire were included.

The functions of the officers in this group were varied. Sometimes their authority comprised the lesser powers of the reeve; in other cases it bore a close similarity to the right of the aldermen to formulate local law, a custom which prepared the way for the Court Leet of the Norman manor.

**Struggle Between Town and Country.** There is a well-known passage in Maitland's *Township and Borough* which illustrates the persistence of the struggle between town and country from the time of the Norman kings to the reconstruction of the Poor Law in 1929. The burgesses of Cambridge desired that the sheriff of that county should hold his court in the town, as the presence of litigants and suitors brought custom to the traders. But the burgesses held certain lands in the county that, on account of their position, were under the jurisdiction of the sheriff. In the cultivation of these fields the burgesses contended the sheriff should not "meddle," nor should he take from the value of their produce tolls and dues leviable over the rest of the county. The dispute is typical of the civil strife which the growth of towns universally occasioned. John's policy was to override the sheriffs when his exchequer would derive an advantage. Had the sheriffs been as numerous as the barons, the first English monarch to contest the power of Rome might have been compelled to face a second assembly at Runnymede.

**Sheriffs Under the Normans.** Five years were required after the Battle of Senlac for the Government of England to be assumed by Norman officials. The generations immediately succeeding were the golden age of the baronial shrievalty. The tradition of the office was established anew by the Conqueror's comrades in arms, its authority was extended and consolidated, and some of the shrievalties were made hereditary. The civil strength of the King rested on this vast access in power of the chief secular officers in the shires. With the exception of the *curia regis*,

William raised the shrievalty to the status of the greatest institution at the King's disposal: he endowed it with a speaking likeness to the Norman vicomte. Shortly after 1066, as we know from the Domesday inquest, it was customary to call a county a *vicecomitatus* or sheriffdom.

**A Golden Age.** By 1086 the sheriff was the head of the royal and public reeves of the shire; his subordinates were specifically charged with fiscal duties, and his authority was secondary only to the King in the manors of the royal demesne. The seeds of nationalism were sown by the instrumentality of the sheriff. His exaltation as the representative of the kingly power permitted the lord to be curbed, procured an income for the monarch, provided for the separation of secular from ecclesiastical jurisdiction, and promoted peace and civil obligation among the people at large. The judicial system of the shire with the sheriff as its principal figure was the central feature of Norman local government.

Some of the older groups of sheriffs, members of high baronial families, in arrears with their payments to the Crown, were reduced by the appointment of special administrators authorized to collect revenues and to supply the King's needs—a task which the sheriffs had failed to fulfil with satisfaction to their master. By the middle of the reign of Henry I, the Exchequer being already in existence, the sheriffs were required to present their accounts for the *ferm* of lands. The significance of that injunction becomes more apparent when we learn that, later in the century, the King's justices in eyre made sweeping encroachments on the sheriffs' former jurisdiction, both financial and judicial.

**A Profitable Office.** His decline in royal favour and the ill-will with which the sheriff was regarded in the shires was indicated by the Inquest of Sheriffs in 1170. Farming the shire revenues had become highly profitable, and aspirants to the office of sheriff were willing to pay large sums for its tenure. For a brief period the sheriff recovered his former strength by the organization of an official force, without whose aid and direction his powers of police and military had often been employed in an irregular manner. The Assize of Clarendon (1166) extended his powers in regard to criminals and their arrest, and the construction of jails and their custody was placed in his hands. But the barons of the exchequer never rested from their demand for accuracy in monetary transactions incidental to the sheriff's office; the administration of justice imposed upon him an exacting, complicated, and generally unremunerative array of duties imperfectly defined. He instituted proceedings, received complaints, accepted pledges for prosecution in criminal and civil cases,

summoned jurors, and made distrainments. On the visits of the justices in eyre his duties were multiplied; on him devolved the supply of all writs and judicial orders.

**Obligations Under Common Law.** In addition to the miscellany of legal, commercial, fiscal, and military duties which the sheriff of the thirteenth century discharged, onerous obligations were borne by him under local usage or common law. In the Norman period, service with plows was included in the sheriff's jurisdiction; a matter that must have brought him into relations with the village assembly. Two centuries later, it was the rule for the itinerant justices to inquire into the state of bridges and causeways, to ascertain who was responsible for their maintenance, and either to request the sheriff to carry out the work, or empower him to compel those on whom that duty rested. The sheriff's authority then, as always, was enforced by distraint or imprisonment.

**The Fount of Local Government.** New public works, for which the demand seems to have been considerable from the reign of Henry III, raised problems of another order. No custom could be cited in furtherance of their execution. It is not improbable that the sheriff was mainly responsible for the voluntary recognition of a local duty in the matter of improvements; by that means an element of initiative was introduced into district affairs which tends to revive at the present time. As the years passed writs would be issued, and the work would secure the protection of the King, but its performance remained under the sheriff's control. Thus were Hereford and Oxford first caused to pave their streets; the tenants in the Norfolk marshland formed a compact group for the construction of walls designed to prevent the inundation of the sea; and the swamps of Romsey drained with the primitive knowledge in the possession of water engineers in the reign of Edward I. Encroachments on the highway, contrary to the licence granted, like the diversion of water and untended hedges, were treated as common nuisances in the sheriff's court. At the end of the thirteenth century the sheriff reached the culmination of his power as the chief peace official and the fount of Local Government in the shire.

**Declining Status.** After 1300 the Justice of the Peace progressively acquired an enlarged authority, while the status and rights of the sheriff declined. The Webbs have told of the sheriff's place in the county from 1688 to 1835 in their volume *Parish and County*.

**The Ancient Vestry Meeting.** Although the civil institutions of the Saxons were changed by the Normans, the religious institutions remained as before. The parish priest was able by means of privilege and education to withstand encroachments on

the rights of the people. He would call together his parishioners in the church where, if they attended, lord and serf, male and female, met upon an equality. Here the liberties of the people were discussed and the priest frequently assumed the role of the champion of the poor. The custom of holding this meeting in the vestry of the church was responsible for the assembly becoming known as the Vestry Meeting or simply "Vestry." The Vestry of the fourteenth century may have been the natural successor of the ancient folk-gemot or a new institution. It is known that civil matters were discussed along with the business of the church. Parish property was conserved, common lands preserved, charities controlled and by-laws made. Payments were made out of the same fund for such varied items as "whipping dogs from church" and "destruction of foxes."

**Break Up of the Feudal System.** During the fourteenth century, new and powerful economic changes began to influence the social fabric of the nation which had their reactions upon local government administration. In spite of long and obstinate efforts to withstand the forces of disruption the feudal system was slowly but surely undermined. Under the Manorial System the labourer was tied to the land of his feudal lord. He was unable to leave the manor or change his occupation without consent. In return for labour-service the villein was entitled to his cottage and garden and a share of the common lands. While conditions remained normal the system was secure. The first disturbing element came from the necessity of protection from foreign foes.

The Wars with France and the Crusades drew both the barons and their vassals from the manor. The need of money rather than service encouraged the barons to free labourers from their ties and admit them as copyholders or free labourers. Some sold their lands outright before starting on the Crusades. But economic forces far stronger than these soon completed the change.

In 1348, the Black Death reached England. The ravages of the terrible plague affected both lords and labourers. Manors became untenanted and labour exceedingly scarce. The forces of supply and demand gave the labourers power to bargain for payment of wages and they were able to move from place to place for higher wages and better conditions. Legislative attempts were made to stem the tide of change, but all in vain. The Vagrancy Laws and the Statutes of Labourers were passed in an endeavour to re-impose the old conditions under penalties of the utmost severity. The landowners also took steps to checkmate the labourers' demands. Land was taken out of cultivation and utilized for sheep-rearing. Common lands were enclosed for the same purpose. Woollen manufacturers developed as a result

of the increase in wool supplies, the labourers flocked to the towns which developed as centres of the new industry and what is known as the Agrarian Revolution took place.

**The Growth of Chartered Boroughs.** These movements gave an impetus to the increase in the number of chartered boroughs.

The King gained financial advantage from the charters he gave to the towns and at the same time dealt a blow at the strength of the barons. In return for composition payments made to the King, the burgesses were freed from feudal incidents connected with the manorial organization. They were empowered to hold their own courts, appoint their own magistrates, juries and officers, plead only in those courts, regulate apprenticeship, and control tolls on merchandise. Duties accompanied these privileges, however, and the burgesses were made responsible for the protection and defence of the borough, maintenance of churches, roads, and bridges. The body incorporated was not always the inhabitants. The franchise sometimes went to owners of certain burgage tenements and in other cases the merchant guild. The corporate body frequently used their privilege in maladministration, resulting in the reforms incorporated in the Municipal Corporation Act, 1835.

**The Justices of the Peace.** The fourteenth century was a period of social dislocation and civil strife. In addition to the vagrancy caused by the break up of feudalism there was the defeat of Mortimer at the hands of King Bruce and groups of disbanded soldiers were let loose to tour the country in search of adventure. The growth of lawlessness and rioting was a contributory cause of the setting up of local conservators of the peace under the Great Seal to keep the peace in the various counties in the reign of Edward III.

These Justices as their name implies were primarily officials of the law. They presided over local criminal courts, supported by the constables who were required to execute the warrants of the Justice. They originated at a time when there was little or no distinction between judicial and administrative duties.

Local and Central Government were linked together with the Sheriff as the dominating factor as described above. The Justices of Assize were no more than occasional visitors and could do little, if anything, to counteract the domination of the Sheriff. It was, therefore, with no difficulty that the Justice of the Peace was enabled to take his place in the transition from mediaeval to modern times. This marked the period which, from the sixteenth century forward, enabled the Parish to take its place again as the unit of local government which had characterized the Saxon system. As time went on, the Justices of the Peace

became members of the House of Commons. The duties which this body required to be performed by the local authorities often proved inappropriate for the area of the parish. Thus it was that the Justices, having passed the legislation, and realizing the inadequacy of the parish to perform the duties, gave to their own Court of Quarter Sessions the task of carrying out the newer and more extensive duties. In this manner they appointed county officials for the repair of county highways and bridges and thus initiated the system of County government as it exists to-day.

**The Mayor's Court of London.** The original rolls of the Mayor's Court exist only from the years 1298 to 1307, and these have now been calendared and edited for the Corporation. The court, which carried out its civil duties in its own way until its amalgamation with the City of London Courts of Westminster, traces its origin back to the time when the Portreeve of London held his court in the Hustings, and there, with the assistance of other magistrates, administered justice and determined all matters of importance arising within the City. It is not clear when the Court of Hustings commenced to divide its functions and to delegate pleas; but, by the middle of the thirteenth century, the Mayor and Aldermen were sitting in a Mayor's Court to hear disputes between foreign merchants and, to some extent, between citizens. About the same time the new court was assuming jurisdiction in matters arising out of breaches of the City ordinances. It was soon busy with tavern-brawlers, bullies, night-walkers, gamblers, fraudulent tradesmen, and other sturdy rogues: with assaults and trespasses (unrelated to land) and minor wrongdoings, and with personal actions of all kinds. Where citizens were concerned, there was no limit to its monetary jurisdiction; and its importance increased with the growth of the City and the increase in the wealth of the people. It could provide a cheap and satisfactory remedy for most injuries, and its methods were far more speedy than those of the Royal Courts. Even the sheriffs, who dealt with certain offences themselves and whose courts, at least in the earlier period, were more frequented than the Mayor's Court, were subject to its jurisdiction in the exercise of their duties, and were liable at any moment to appear there as defendants in connection with unlawful distrains or Customs offences. Citizens complained that the sheriff took unfair dues on salt or wrongfully confiscated poultry and fish. Creditors sued them for allowing debtors to escape, and wharf-owners for driving foreigners away from the quays; but the sheriffs, on the other hand, had their own remedies in the Mayor's Court, and there is evidence that they were not slow to pursue them.



The City of London Court is the successor of the old Sheriff's Court whose origin has already been described. Through various Acts of Parliament the Court does very much of the work of an ordinary county court.

**Town's Watchmen—The Statute of Winchester.** It has already been shown how, under the Saxon "Frankpledge" system, the freemen were grouped into tythings for the maintenance of peace. The Statute of Winchester (13 Edward I, October 1285) has always been considered of great importance as the first Statute summing up and placing on a permanent basis the earlier procedure to preserve the peace, and for the long period in which it existed as the principal general Police Act. Among the provisions of the Act were those which provided: (a) That watch should be kept from sunset to sunrise, as in times past; and in every city six men at every gate; in every borough twelve men; and in every town six or four, according to the number of inhabitants, and that suspicious strangers should be arrested; or, if they avoided arrest, hue and cry was to be levied from town to town until they were arrested; (b) That every man should have in his house arms—according to his station—to keep the peace; and (c) that two constables should be chosen in every Hundred and Franchise to make view of Armour and to present to the Justices defaulters about Armour, Watches, Highways, Hue and Cry, and persons who lodged strangers for whom they would not answer.

The etymology of the word "Constable" is obscure. Old writers say it is derived from the Saxon words *Cuningge* or *Kuningge*, which signifies the King and "Stable," signifying stability or stay of the King in maintaining the peace. This is supported by the occurrence of "Cunestabula" in the Domesday Book, for maintaining the King's right. More modern writers, however, suggest that it is derived from the Latin *Comes Stabuli*, meaning Equerry or Master of the Horse, and thence to Commander of a Company, etc. The date when the office was created is also lost in obscurity. The word is mentioned in Magna Carta and the early Norman Statutes without any special explanation as to its meaning, and it must be assumed that it was then of common knowledge. The law required that a man chosen for the Office of Constable should possess three qualifications: first to have honesty to execute his office truly without malice, affection or partiality; secondly, knowledge to understand what he ought to do; and, thirdly, ability as well in substance or estate as also in body that he might attend and execute his office diligently and not neglect the same through impotency of body or want. (Coke.)

**The Parish Constable.** The Riot Act, 1328, made it compulsory



for a constable to be appointed for each parish. In many localities he remained the sole police officer until the establishment of the modern police forces made the appointment unnecessary. Every able-bodied ratepayer between 25 and 55 years became liable for service, which might be voluntary and unpaid. There were many exemptions and substitutes might be provided.

The City of London Police were from time immemorial on a different footing from the other parts of the country. In the Saxon period voluntary associations, called "Peace Guilds," were entered into by the inhabitants of London and other towns for their own protection, and it is probable that such was the inception of the City of London Police. At any rate, as far back as history goes, the citizen kept "watch and ward," and the responsibility for the administration of justice and for seeing that the police functions were carried out in the several wards, was placed upon the Aldermen. In 1285, when the Statute of Winchester was passed commanding the watch to be kept in all cities and towns, as it had used to be kept, a separate Statute was passed as regards the City of London (*Statute Civitatis London*), and it is the first Act in the Statute Book touching the police system of the City. Every inhabitant of the City of London was required to take part in "Watch and Ward," and the constable of the precinct was responsible for seeing that inhabitants took their turn of reporting defaulters. The watch was regularly set on each ward every night; when disturbances arose the numbers were doubled and ordered to be kept by day as well.

This system was continued for centuries, but by the middle of the seventeenth century the old Frankpledge system had become practically obsolete, crime became considerable, and there was no parliamentary legislation to meet it. In 1663, however, an Act of Common Council was passed which provided that there should be on duty in the City from sunset to sunrise over 1,000 watchmen or bellmen, afterwards called "Charlies," after King Charles, in whose reign they were instituted. In 1737 an Act of Parliament was passed "for better regulating the Night Watch and Bedels within the City of London and the liberties thereof," which required the Court of Common Council to order and appoint what number of watchmen and bedels they should judge necessary to be kept in each of the several wards. Under that Act a more efficient system of police was established by day as well as by night, and the force then established may be said to be the first step towards the institution of regular paid police. The system of watching was continued in the several wards, but a force of paid constables or patrols was appointed.

The Force was found insufficient in 1832, when it was remodelled by the Lord Mayor and Aldermen. The Force was again found inadequate in 1838, when it was increased and reconstructed. Such was the Force which existed on the 25th December 1839, when the present City of London Police Act came into operation, repealing the Act of 1737, suspending the ancient right of electing ward constables and discharging persons assessed to pay police rate from liability of Watch and Ward by virtue of the Statute of Winchester, 1285, and providing for the appointment of a Commissioner and the establishment of the Force as it has since existed, except as regards the increase of its strength and variation of Departmental organization which has taken place from time to time to meet up-to-date requirements.

The City of London Police Act, 1839, provided for the expense of the Force being paid from the City's cash, and from a police rate in the proportion of one-fourth and three-fourths respectively, subject to a limit of eightpence in the pound, but this limit was removed and the City's cash contribution discontinued by the City of London Police Act, 1919. Arrangements were then made for a Government grant towards the expenses of the Force in somewhat similar terms to those in which such grant is made to the other police forces of the country.

Outside the City of London endeavours were made to meet the demands for preventing crime by appointing constables to act under the magistrates at the Police Offices, notably the Bow Street Patrol, but at about the beginning of the nineteenth century the police system of the metropolis was far from satisfactory. Much was written on the subject, and Parliamentary Committees were appointed in 1812, 1816, 1818, 1822, and 1828 to investigate the state of the nightly watch and of the police.

The Parliamentary Committee of 1828 reported and it was from the then City Force that Sir Robert Peel formed his plan for the creation of the one Force for the several Metropolitan Parishes, which resulted in the passing of the Metropolitan Police Act, 1829.

In the provinces, Manchester took a strong lead, but it was not until the passing of the Police Act, 1856, that the Central Government began to put pressure on the local authorities.

The Lighting and Watching Act, 1833, when formally adopted, permitted townships with a population of 5,000 to employ watchmen.

**Genesis of the Poor Laws.** The causes which led to the growth of enclosures and the failure to maintain the labourers on the land have already been described. The villeins discovered that the price of their emancipation was uncertainty of livelihood

and the loss of house and land. Many were evicted from their holdings and took to touring the land, creating a vagabond class. These, together with the needy and afflicted, always had the religious establishments to fall back upon; but when the dissolution of the monasteries took place under Henry VIII, all the destitution, deserved and undeserved, was made apparent to the nation. There were other causes at work to accentuate the evil. A succession of bad harvests and the debasement of the coinage raised food prices to extreme limits. The excessive severity of the Vagrancy Laws failed to stamp out vagabondage although distinctions were made between the giving of alms to the lusty and to the impotent. The care of the impotent poor had previously been entirely the work of the Church or of private charity. In the tenth century King Ethelred had decreed that one-third of the tithe should be devoted to the poor. The changed conditions of the sixteenth century created a climax which resulted in the substitution of public for voluntary effort, but only after the latter had made every effort to survive. In 1551 curates were required to appeal for alms in church and bring to the notice of the Bishop for expostulation those who failed to respond. In 1563 such delinquents were to be brought before the Justices, who were to persuade them in the first instance and, in default, Overseers of the Poor were to levy an assessment. The laws for the relief of the poor which sprang up in this manner were consolidated and strengthened in the famous Statute, 43 Eliz., c. 2—The Poor Relief Act, 1601.

Under this Act the Justices were required to appoint annually, in Easter week, two, three, or four "substantial householders" who, together with the Churchwardens, were to be the Overseers of the Poor for their parish and were to raise by such taxation as they thought fit, from every inhabitant, a fund for the relief of the poor. The impotent were to be relieved, habitations built for the aged poor, children of the poor apprenticed, and stocks of material purchased upon which the able-bodied were to be set to work.

**The Industrial Revolution and Sanitation.** Up to the dawn of the eighteenth century, the development of Local Government was slow and mainly connected with poor relief. It was the wonderful change in industry known as the Industrial Revolution which created in modern times the necessity for increased activity in the sphere of Local Government. Other contributory causes were the ravages of diseases, the growth of scientific knowledge, and changes in political life, which may be termed "social evolution." The Black Death (1348-9) and later the severe plague of 1665 produced similar conditions,

the living being unable satisfactorily to bury the dead. In the case of London another calamity occurred in the Great Fire of 1668, but this had its beneficial counterpart in acting as a great disinfector and destroyer of insanitary property. These ravages were looked upon as punishments of the Deity. The only preventive steps taken were by means of Papal Bulls and Royal Edicts. Ancient London by-laws of 1297 required citizens to clean the street in front of their doors. There were also prohibitions against the flaying of dead horses in the streets and pig-keeping. Food regulations punished defaulters by pillory and imprisonment. Bakers were placed in the stocks with their bad dough round their necks, and publicans had their sour ale poured over their heads.

The first sanitary Statute was passed in 1388, and imposed a penalty of £20 upon persons casting refuse into streams.

The Statute of Sewers, 1532, appointed Commissioners to undertake the cleansing of rivers and streams. Such nuisances as existed were dealt with by the Manor Court and later by the Boroughs, Vestries or Commissioners until the changes brought by the eighteenth century. By this time the agricultural districts had yielded their rich treasures of coal and iron, which were to revolutionize the social and industrial life of the nation, making it the richest in the world, but producing those seething social problems, the early neglect of which has left an inheritance of perplexity and difficulty in the sphere of local government.

Industry began to centre round the districts yielding the sources of industrial development—coal for smelting and for power, and iron for machinery. The population gathered and rapidly increased in those areas. The cottage industries gave place to large-scale production in factories and workshops.

Many a rural village became a black, smoky town; the pleasant stream became a foul sewer; the pretty pond, a common cess-pool; and the wayside wastes, rubbish heaps. Thus arose those serious problems of modern industrial life, namely, the necessity for new methods of sanitation, the abatement of nuisances, the disposal of refuse and sewage, the prevention and notification of diseases, the provisions of pure and sufficient water, of hospitals and sanatoria, the regulation of lodging-houses, the closing of insanitary dwellings, the clearance of slum areas, the maintenance of highways, streets, and bridges, the regulation of buildings, the provision of markets, the protection of food, the lighting of streets, the provision of baths, parks, allotments, and the great concomitant of modern industry—the relief of the destitute and unemployed.

As the principle of *laissez faire* had become the fetish of the political economy of the day, little or nothing was done at the outset, and the evil conditions were exaggerated. In 1831 and again in 1847 the ravages of epidemic cholera forced public attention to matters of public health and to the modern development inaugurated during the nineteenth century.

## (B) NINETEENTH CENTURY LOCAL GOVERNMENT

(i) **Statutory Bodies Created by Local Act, e.g. Commissioners for Paving, Lighting, Watching, and Cleansing.** When the problems resulting from the Industrial Revolution thrust themselves so strongly upon the public as to demand greater activity, the method always adopted was the *ad hoc* system, viz. the creation of a new authority for every new problem, each having power to levy a rate to meet its expenses. Local Government became a chaos of areas, bodies, and rates. In addition to the Town Councils and Vestries, there were added Boards of Guardians, Commissioners of Sewers, Improvement Commissioners, Lighting Inspectors, Turnpike Trustees, Highways Boards, Nuisance Commissioners, Local Boards of Health, River Conservancy Boards, Port Sanitary Authorities, Burial Boards and School Boards.

It is difficult to understand to-day how the Borough Councils failed to appreciate their responsibilities for the paving, lighting, watching and cleansing of their towns. The intimate connection between poverty and disease was noticed and recorded by the Royal Commission on the Poor Laws of 1834. It was when a man fell sick that he was most likely to lose work and become a charge upon poor relief funds. Hence, the Guardians were empowered to deal with nuisances as part of their functions, and in rural areas remained a public health authority until 1894.

Under the Towns Improvement Clauses Act, 1847, commissioners, trustees or others appointed under special Acts derived powers for paving, draining, cleansing, lighting, and improving their towns. The Public Health Act, 1848, provided for the establishment of a local board of health, elected by the ratepayers in every urban area where there was no body of Commissioners. The Local Government Act, 1894, made the system more rational, and the Commissioners and Local Boards were abolished. Provision was made for parishes to fall within one district and districts within the one Administrative County. Each Borough Council became the Urban Sanitary Authority for the borough, and no separate election took place. Outside the borough areas, elected Urban or Rural District Councils were established, each parish with a population of 300 sending at least one repre-

sentative. In the Rural Districts, the councillors were elected from electors or residents of the Union of which the District formed part, and these representatives became thereby the Guardians for the Union. In the Urban District, the qualification was restricted to the District, and there was a separate election of Guardians. One matter of public health administration, curiously enough, remained with the Guardians, viz. the Vaccination Acts. Since the passing of the Local Government Act, 1929, the Boards of Guardians have been abolished and their powers and duties transferred to the Councils of Counties and County Boroughs.

(ii) **The Reform of Municipal Corporations.** It is important to note that, of the existing municipalities of England, only comparatively few occupy the same sites as the Roman *municipia* or *colonia*, mentioned by Ptolemy and Nennius; but though London, York, Lincoln, Leicester, Canterbury, and Winchester have a continuous historical existence in these authorities, they wisely do not venture (to use the words of Professor Stubbs in his *Constitutional History*), like some of the towns of southern France, to claim any unbroken succession from the Roman municipality. Maitland very aptly states that there is no such thing as the history of the boroughs; it is the history of each borough that must be investigated for, until 1835, if not until 1883, there was no uniformity of administration.

**EARLY ENGLISH TOWNS.** The primitive settler preferred the sylvan nooks of the forest and the breezy downs to the limited areas of the Roman cities, such as York, Chester, London, etc., but eventually his mark became a town, which was merely a place where more people were living than elsewhere, and Alfred the Great and his sister were enabled to fortify thirty such rising assemblages, where previously not one existed. Where a Roman road forded a river, providing us with the "Stratfords," or a shrine attracted pilgrims, as at Canterbury, or a monastery or abbey could cast its protective shadow, as at Oxford, or a river could convey vessels from the sea to a place of security, as at Bristol; there the greater hamlet rose. It would be yet but a collection of huts with their simple outbuildings surrounded by a stockade of stakes and mounds and ditches, the outcome of the labour that wrested the arable land from the forest, and the pastures from the swamp. But when the tun or town was rising into importance, its inhabitants were sinking into insignificance, by being serfs to the landlords, for the manor invaded the town.

Although 1,000 years have passed since the first English towns arose, the manorial incursion is still felt in many an English town and city in respect to burdens and limitations imposed

by its ground landlords. And further, nearly every English liberty that distinguished the old towns was originally purchased from the manorial lord by the hard earnings of the enterprising people.

When a bailiff was appointed, or a market established, or a court of justice provided, it occurred by permission of the lord on payment to him of tolls and fees. A reeve appointed by the lord would gather his tolls and exact his services by compelling the townsmen to till the lord's soil, gather his crops, and grind his corn. It was solely of the lord's grace that the poor of the town could drive their swine to the woods and their cattle to the pastures.

In the business of those quaint and narrow streets, and in the handicrafts of their homes, as the town-bell summoned the tradesman to town-mote and crafts gild to attend to his city's affairs, there was working in a quiet way the ultimate emancipation of England. And as the towns were no respecters of persons—for within them frequently lived the lord in his castle, the abbot and monks in their monastery, as well as the merchants in their stores—there was that cosmopolitan spirit among them which attracted the serfs from the manors. And, even six centuries back, England's industries were rapidly rising and were fairly distributed. "Then Bristol was renowned for its leather, Gloucester for its iron, Coventry for its soap, Warwick and Bridport for cord, Lewes and Shaftesbury for linen, Wilton for needles, and Leicester for cutlery, while London, the centre of commerce and handicrafts, was becoming the leading city of Europe."

The earliest citizens, including those of London, were engaged in pastoral and arable pursuits, and, when trade and commerce became their principal callings, the newly arrived serf from the country manor could find his usual avocation; but, although he might still be subject to a lord, he was no longer a mere implement on the manor, or such an integral part of it as to be so essential to its pecuniary value as to be transferred with it.

**THE CRAFT GILDS.** The portal through which the serf eventually passed to complete emancipation was the gild, in which he had to serve seven years' apprenticeship to become a full member. It was a unit of people, combined for fraternity, support, and protection, similar to the old tything, but unlike it in being composed of many families of different names. There was the Firth Gild, a new tie of kinship for mutual responsibility and support. There was the Town Gild that formed the civic power. Municipal and town records tell of men as of institutions.

Occasionally these men who took active part in the government of their native places are of such universal interest as John Shakespeare (the father of the poet), who successively filled the posts of ale-taster, assessor, Burgess, constable, chamberlain, alderman, and high sheriff at Stratford-on-Avon, and who was fined by the Lord of the Manor for not cleaning his drains. The Crafts Gilds included every workman. The seven years of apprenticeship exacted of every craftsman made expert workmen and capable citizens of even waifs and strays, if any were found. It was a continuation or revival of the fraternal system of the original village. Opportunities for work were solicitously offered, and thought was exercised upon the fitness of the unemployed to the work selected. And each gild provided for its members an insurance against failure in business, sickness, and bereavement. It recovered debts, educated and apprenticed its children, and saved families from destitution. The gilds were like a river of fraternity coming down from ancient days to debouch upon a sea of modern times, where mutual help was lost in isolated interests. They were more to the industrial population of that time (in some respects the darkest ages) than the Friendly Societies are now. But wealthy and efficient for good as they became, after centuries of existence, with the exception of the gilds of London, all their means were appropriated by rapacious governments in the sixteenth century.

THE REFORM OF 1835. The Royal Commissioners on Municipal Corporations, who issued their Report in 1835, declared that it "would be difficult to describe accurately the early constitution of the municipal corporations in England and Wales; it is certain that many of their institutions were established in practice long before they were settled by law. . . . In some boroughs the common councils seem to have been formed out of fragments of the leet juries, whilst in others we have reason to suppose that they were what their name strictly implies, councillors, called into the chamber by the alderman or presiding functionary, with whom they were to advise. . . . We have not discovered that there was any general principle in the mode of forming the constituency of the boroughs, nor can we assume that any one system of policy or common law right prevailed at any period throughout the realm. . . ."

Corporate towns, as a rule, obtained their local independence and power because they were rich enough to offer some price for such favours, or some resistance to oppression. These riches were obtained not from agriculture, the basis of the primitive village system, but from commerce, the most active opponent



of the primitive village system. The position of the assembly of the boroughs of England may best be gathered from the first report of the Municipal Corporation Commissioners of 1835. They say: "Without inquiry when corporations in this country assumed their present form, it may be safely asserted that the body, however named, which was originally intended to share in the rights which the early charters conferred, embraced the great mass of the householders or inhabitants. By degrees, exclusive qualifications were insisted on, with increasing strictness and with new exceptions, as the privileges to which these exclusive bodies laid claim rose in importance."

While the question of the reform of municipal institutions in England and Wales was still being inquired into, a Scottish Burghs Bill passed quietly through Parliament, probably because it dealt with "foreign" affairs, which established a representative system in lieu of the ancient corporations and transferred the property to the elective councils.

The Municipal Corporations Act, 1835, established a uniform system of government in 178 out of the 246 incorporated towns. Political abuses were swept away. Administrative and judicial powers were separated, trading monopolies abolished, the franchise extended to the ratepayers and financial administration reorganized by the introduction of a borough audit system. The Recorder was to be appointed by the Crown, and the borough police force placed under a special Watch Committee.

The Municipal Corporations Act, 1835, was followed by numerous amendments, and finally consolidated in the Municipal Corporations Act, 1882.

(iii) **London.** The name London, derived probably from the Celtic, suggests that the city was of Celtic, or earlier, origin. During the times of the Romans it was confined to the area within the city wall, the course of which is marked to this day by the "gates," Aldgate, Bishopsgate, Moorgate, Cripplegate, Aldersgate, Newgate, and Ludgate. Naturally, as the place expanded, the name was applied to the districts, known as Liberties, which immediately adjoined the city wall, and then to those farther afield. Eventually, by the Metropolis Local Management Act, 1855, and the Local Government Act, 1888, it was constituted the Administrative County of London.

For many years the term "metropolis" had widely varying meanings. To take only a few examples: (i) the General Paving (Metropolis) Act, 1817, dealt, on the south side of the Thames, only with Southwark, (ii) the Metropolitan Police Act, 1839, related in general to all parishes (excluding the City) within a radius of 15 miles from Charing Cross; this area extended as far

as Uxbridge, Cheshunt, Erith, and Coulsdon, (iii) the Metropolitan Buildings Act, 1844, related to the whole of the present county with the addition of Hornsey, Tottenham, and Stratford, and (iv) the Metropolitan Sewers Act, 1848, authorized action in an area distant not more than 20 miles from St. Paul's Cathedral, which would include Hounslow, Waltham, Erith, and Purley. Even now the definition is far from being observed.

(a) **THE CITY.** The City was ruled by the Mayor, Aldermen, and Common Council, but as their authority did not extend far beyond the city walls, the affairs of the outlying districts came to be administered, and not infrequently mal-administered, by a multitude of sewer commissioner boards and the like. By the Metropolis Management Act, 1855, most of these were abolished, and the parish vestries, either separately or grouped into district boards, were made the primary local authorities and also the electors of a central authority known as the Metropolitan Board of Works. Thus, after many centuries, London, but a different and much larger London, had once more a central government to which could be entrusted the administration of certain functions common to the whole area.

(b) **THE LONDON VESTRIES.** The result of the efforts of the Privy Council Office was the passing of the Sanitary Act, 1866, an Act which introduced a definite element of compulsion into the go-as-you-please procedure which had hitherto been characterized by the administration of sanitary law. The reappearance of cholera in the same year added to its influence, and the renewed study of foreign ship-borne disease was taken up by the department. In the same year an elaborate inquiry, undertaken by Doctor Buchanan, produced evidence that a reduction in the rate of mortality from tuberculosis in certain towns was clearly due to the drying of the soil in those towns caused by recently constructed works of drainage. Medical science had advanced and was continuously producing valuable results, and the time was ripening for improved administrative methods. The machinery for setting up urban administrative authorities, other than municipal corporations, was controlled by the Home Secretary, whose department was also responsible for sanctioning loans for the construction of public works of sanitary importance which the authorities proposed to carry out. The moving influence which impelled these authorities to undertake such works came, for the most part, from the medical department of the Privy Council. These departments, however, had no machinery for dealing systematically with local authorities or for exercising anything but spasmodic influence on their actions.

The London Vestries were replaced by the Metropolitan

Borough Councils in accordance with the London Government Act, 1899.

(c) **THE WARDS OF THE CITY OF LONDON.** From very early times the City has been divided into wards for the purpose of government. While the parish became the unit of local administration, the ward was the unit of the central body sitting at Guild-Hall.

Many authorities, from the twelfth century Fitzstephen to the modern Sir Laurence Gomme, have seen in the wards a Roman inheritance, but the ground upon which the speculation is based is at best slender, if it exists at all. However that may be, the wards more or less in their present form certainly go back to Norman days.

Each ward in the City, of which there are 26, including the nominal Ward of Bridge Without, elects an Alderman for life, and the varying number of "good and discreet citizens" to be the Common Council for one year. With the passing of time, the ward, which formerly managed the watch "police," sanitary and local upkeep generally, has ceased to function, and from being a unit of government has become a unit of election only. Almost the last vestige of its former great authority was swept away by the City of London (Union of Parishes) Act, 1907, which took from the ward-motes the right to raise money by rate. The following are the wards, with a note as to any special features which they may possess—

(1) *Aldersgate.* This ward has two "sides"—that within and that without the wall, a gateway having stood a little north of what is now Gresham Street.

(2) *Aldgate.* The ward derives its name from the City's Eastern gate, which was spelt at different periods, Aligate, Aeldgate, and Aldgate.

(3) *Bassishaw.* The curious name is said to be a corruption of "Bassings Hall," the home of a famous City family of Bassinges or Basings, which existed of old time in the vicinity. The name survives in Basinghall Street.

(4) *Billingsgate.* The ward grew up around the haven or dock, which originally was similar in aspect to Queenhithe, in Thames Street, with plenty of room for the small ships it was originally intended to accommodate.

(5) *Bishopsgate Within.* This is that part of the entire ward of Bishopsgate which lies within the line of London Wall and stretches southward therefrom to the point where Lombard Street and Fenchurch Street are divided by the intersection of Gracechurch Street. Bishopsgate Without is conterminous with the parish of St. Botolph, the church of which dates from the early eighteenth century.

(6) *Bread Street*. The ward is prominently associated with the textile trade, though its earlier industries were those related to bread and fish. Bread Street was the bakers' quarter, and Friday Street was devoted to fish.

(7) *Bridge Within and Without* takes its name from London Bridge which connects the Aldermanries of Bridge Within and Bridge Without. Bridge Without is now only the bridge itself, and no duties attach to the Aldermanry. There are no electors, and it is a gift of the Court of Aldermen, who offer it as an honour to their senior member.

(8) *Broad Street Ward*, in conjunction with that of Langbourn, is the financial centre of the City. Within its borders lie the Stock Exchange, most of the Bank of England, about half of the Royal Exchange, many banks and insurance offices, and most of the offices of the stockbrokers and jobbers of the City.

(9) *Castlebaynard*. The first Castle was attributed to Ralf Baynard, a follower of William the Conqueror. Destroyed by fire and rebuilt further east, it was occupied later by members of the Fitz Walter family, in whom the office of Castellan and Standard Bearer of the City was hereditary, Humphrey, Duke of Gloucester, Edward IV, and Richard III. It was burned down in 1666 and not rebuilt.

(10) *Candlewick*. This ward was known in the thirteenth century as Candleuysstrate, as was also the present Cannon Street, the name of which has been so corrupted.

(11) *Cheap Ward*. Cheap is old English for market. The fame of Cheapside rests more upon its pageantry than upon its merchandise. It was the centre of gravity of most of the festivities and parades of medieval London.

(12) *Coleman Street Ward* is partly within and partly without the line of London Wall. The ward is named after Coleman Street, a far older thoroughfare than Moorgate (the street, not the gate). Coleman Street was in former times the resort of charcoal burners or Coleman, and in that fact is found the origin of the name.

(13) *Cordwainer*. This, as the name implies, was the shoemaker's ward in old London. It was originally called Cordwainer Street Ward, the street so named being the present Bow Lane. There lived and worked the cordwainers or shoemakers.

(14) *Cornhill Ward* is named after its most important thoroughfare, and contains part of the Royal Exchange, two fine churches, and a considerable overflow from the banking world of Lombard Street.

(15) *Cripplegate Within*. The wards of Cripplegate Within and Without derive their name from one of the bygone gates in London Wall. The supposition that the gate took its prefix from

the cripples who begged thereby has latterly yielded to the theory that the origin is to be found in *crepulgeat*, Anglo-Saxon for "covered way." It is possible that in the Middle Ages a walled or tunnelled passage connected the postern with an outlying fortification in what is now Barbican, the word *geat* used indifferently for a way or gate.

(16) *Cripplegate Without*. The principal thoroughfare of the ward is Fore Street, so called from the fact that it ran parallel with and "afore" London Wall.

(17) *Dowgate*. There is controversy among archaeologists as to whether the ward took its name from Dowgate Dock or Dowgate Hill, owing to the fact, already noted, that the Anglo-Saxon word *geat* was used indifferently for gate, a way, or a street. The first syllable in the name of the ward is thought by some scholars to represent a Celtic word for water.

(18) *Farringdon Within*. The ward of Farringdon Within is so large and so scattered that, for its boundaries, it is necessary to go to the map. As the name implies, it is that part of Farringdon which lies inside the old City Wall. Until 1394 it was one with Farringdon Without. Both wards take their name from the great family of Farndone, whose chief possessed the Aldermanry in the thirteenth century. Long before Farringdon was divided the Aldermanry had become elective.

(19) *Farringdon Without* is the largest of the City wards. Actually it is in two parts or "sides," as they are called, and in many ways it has a double organization. Touching the river on the south, the ward extends north to Holborn Bars, takes in Charterhouse Street, runs at the rear of Aldersgate Street, includes St. Bartholomew's Church and Hospital and the Central Criminal Court.

(20) *Langbourn*. Modern research has established that the words *Langbourn* and *Lombard* have a common origin. In the twelfth century the ward was called Langbord and in the thirteenth Longebrod among other variations. Lombard is a corruption of Longobard. Lombard Street, from which the Ward really takes its name, is pre-eminently the banking thoroughfare of London and perhaps of the world.

(21) *Lime Street*, from which the ward takes its name, may derive its appellation from the fact that it was long ago the abode of buyers or sellers of lime. The ward's most important thoroughfare is Leadenhall Street, which it shares with other wards.

(22) *Portsoken Ward*. On the eastern side of the City and wholly without the line of London Wall, lies the pleasantly named ward of Portsoken. Legend has it that the land hereabouts was granted by King Canute to 13 knights in return for

feats of arms, and that in this way arose the *Cnihtengild* or Guild of Knights, which in 1125 surrendered its lands and privileges to the neighbouring priory of Holy Trinity, Aldgate. From that period until the Reformation the Prior for the time being was Alderman of the ward. Soke is a term familiar to manorial law. Bygone archaeologists associated the first syllable of Portsoken, some with the adjacent gate, and others with the not-far-distant river (considered as a port), but modern research inclines to make "port" synonymous with "city," thus giving "the soke of the City."

(23) *Queenhithe*. In the middle of Thames Street on the river front may be found the dock or harbour of Queenhithe, a remnant of the mediæval port of London, and from this haven the ward takes its name. From the river it extends north to Knight-rider Street and Great Trinity Lane.

(24) *Tower*. The ward of Tower does not contain the Tower of London, although by right it should. Not long after William the Conqueror gave Londoners their Charter, declaring that all the old customs should continue and that their rights should be respected, he began to build a fortress as much to intimidate them as to protect the capital; and he pulled down a part of the Ancient City Wall to do so. Ever since the Tower has had its own jurisdiction, although in these days it is considered to be in Stepney.

(25) *Vintry*. The Vintry was once the home of the wine trade. Stow describes the many "Faïre and large houses with vaults and cellars for the storage of wines and the lodging of the 'Bordeaux merchant'" which here existed.

(26) *Walbrook*. This ward, as well as one of its streets, is named after a brook which gathers up the surface and spring waters of what are now Finsbury and Shoreditch, and heading southwards, entered the Thames a little to the westward of Dowgate Dock. The fact that the stream ran through culverts pierced for it in London Wall, suggested the name Wall Brook, now modified into Walbrook.

With the passing of time the ward has ceased to function, and from being a unit of government has become a unit of election only.

(iv) **The Reform of the Poor Law**. Originally, from being migratory missionaries, the priests assumed a stationary condition, and in localizing themselves, founded the parish church. Originally, the only support a church could rely upon was endowment of land, and as the first converts to the church from the king downwards were those who were acquiring land, the churches became amply endowed. Sometimes large estates were given by their owners entering a monastery. They were given as a thank-offering for recovery

from illness, or to assuage a guilty conscience for foul deeds done. Frequently the gift was a meretricious act, made when the guilty donor was dying; but, on every occasion, the saving principle was recognized that as the poor was God's heritage, largely the gifts should be for the benefit of the poor worker. It was so in respect to the first tithes. They began with King Offa of Mercia, 790, giving a tenth portion of his income to the church as an expiation for his crime. Afterwards, Ethelwulf, King of Wessex, 855, atoned for his crimes in a similar manner, but the efficacy of his gifts was supposed to lie in their feeding and clothing the poor. Eventually King Edgar, 790, and Stephen, 1151, attempted to make tithes compulsory, and they were designated as "alms for the needy." Henry II followed on the same lines, with half of the tithes to go to the unfortunate and helpless. Such considerations for the poor were regarded as "obligations to God." During those old manorial times want frequently occurred, but rarely famine. The first-mentioned took place in 1315, when corn rose to five times its usual price through excessive rains, and many people and cattle died.

(v) **The Parish.** It is very important to bear in mind the original secular, as well as sacred, position of the parish church. The rural parish still retains a substantial remnant of its old corporate life, clinging, as it were, round the parish church and burial-ground. Parochial overseers continued to be the authorities mainly responsible for the due collection of rates and the accuracy of registers, on which electoral qualifications depended for their validity, while the habit of common parochial action was kept up by annual vestry meetings, and the choice of various representative offices, not to speak of less formal but not less popular conventions of parishioners at the village club or on the village green. When Queen Victoria came to the throne very little attention was given to the management of local affairs, but the situation was ripe for immediate advance, and this was due to three things which occurred in the previous reign. In the early thirties the first epidemic of Asiatic cholera started and ravaged our country. The Poor Law Amendment Act, 1834, provided for the appointment of qualified medical men in every Poor Law Union or parish of England and Wales, and in 1836, the Act for registering births, deaths, and marriages in this country made practicable the recording and study of statistics of mortality.

### (C) REVIEW OF THE STRUCTURE OF ENGLISH LOCAL GOVERNMENT AS IT EXISTED UP TO 1888

In the Poor Law Board of 1847 there existed a number of men with much experience in dealing with vestries and boards of

guardians in so far as those bodies were concerned with the making and levying of rates and with the relief of the poor. The vestries were already the sewer authorities in rural towns, and the boards of guardians were the nuisance authorities. But there was no co-ordinating hand, and the work of the different authorities, both central and local, was marred by friction and misunderstanding.

The Poor Law department had no permanent medical director to influence the action of the central control. The Privy Council department had a strong medical element which complained that the workhouse infirmaries and the arrangements locally made for carrying out public vaccination under the direction of the Poor Law Board lacked much which proper medical supervision could supply.

**The Local Government Board Constituted.** All these matters were subjected to rigid investigation by a Royal Commission appointed in 1869 by Mr. Gladstone's administration. The Report of that Commission, made in 1871, was the immediate cause of the constitution of the Local Government Board.

The Bill for the constitution of the new authority was originally in the hands of Mr. W. E. Forster, Vice-President of the Privy Council, and, if he had carried it through, it is possible that some mistakes of the new authority which were made at the outset would have been avoided. But education was competing with public health for the attention of the minister most competent to deal with both, and the Bill for constituting the new public health authority fell to be administered by the President of the Poor Law Board, Mr. James Stansfeld, who became the first President of the Local Government Board, whilst (Sir) John Lambert, a Poor Law Inspector of great ability, and possessing local knowledge and experience (he had been a solicitor and Mayor of Salisbury), was appointed, together with the secretary of the defunct Poor Law Board, as joint secretaries of the Local Government Board.

The very able medical officer of the Privy Council, (Sir) John Simon, was not received with any great favour by the new hierarchy, and the secretary of that department of the Home Office which had been put into the combination also found that he was not wanted in the new combination. Sir John Simon, at the Privy Council Office, had been to all intents and purposes an executive officer. It is true that he submitted his proposals for work to his Parliamentary chiefs, but those chiefs gave him a free hand for the exercise of his duties. Under the Local Government Board his executive authority was taken away, and he became an advising officer who could do little or nothing without



the sanction of the secretary of the Board. But that secretary was, more than most men, conversant with the administration of local business, and he was thoroughly acquainted with the views of the Royal Sanitary Commission, of which he was himself an active and useful member. In the circumstances, however, these two very able men could not agree as to their respective functions. The Minister backed the secretary, and the medical adviser refused to go to the wall. Thus, during the first five years of the new Board's career, two of the ablest men in the public service were not pulling together, and were therefore not exerting their full powers for solving the problems of sanitary progress. Not that either was idle. Each was working actively in his own path, but the paths were separate instead of being together.

**Vaccination.** Meanwhile difficulties were developing. In 1871 a great epidemic of smallpox took place in this country. It was dealt with vigorously under the Vaccination Act, 1867, strengthened by a new Act passed in 1871, which directed that the guardians of every union and parish should appoint and pay one or more vaccination officers.

For the next twenty-seven years, until the advent of the statutory conscientious objector, vaccination was systematically enforced in this country, and, under the firm administration of the Local Government Board, smallpox, formerly a disease most destructive of human beauty, as well as of human life, had almost entirely disappeared. The improvement of sanitary administration during the period has developed methods of dealing with persons who have been in contact with infection, so that many have come to think that vaccination is no longer a proceeding of great primary importance. Be that as it may, the numbers vaccinated began to diminish after 1898, although the loophole given to the conscientious objector was at first carefully guarded; but since about 1906, the inspectors of the governing authority have made little or no effort to compel the observance of the Vaccination Acts.

**The Boards of Guardians.** The magnificent work carried out by the Poor Law Commissioners and by the medical officers of the local Boards of Guardians in the early days of the great Queen's reign is little known to-day by the average citizen.

Yet it was the Poor Law Commissioners and Edwin Chadwick, their secretary, aided by reports from the Poor Law medical officers, actuated by an address to the Crown, voted by the House of Lords, that brought about in 1840 the first decided advance in the path of sanitary progress. A Select Committee of the House of Commons, after a three months' inquiry into the subject, recommended the passing of a General Buildings

Act and a General Sewerage Act, the constitution of Boards of Health in large towns, and the appointment in every such town of an officer to enforce regulations for sanitary purposes. This was in 1840, and in the same year, at the instance of the Poor Law Commission, the legislature established a voluntary and gratuitous system of public vaccination, to enable those who would to protect themselves against the ravages of smallpox. In 1842 the Poor Law Commission issued the most important document which, up to that time, had ever been published in a matter relating to the health of the public.

The Boards of Guardians, which were constituted by the Poor Law Amendment Act, 1834, continued until they were abolished as from the 1st April, 1930, by Part I of the Local Government Act, 1929. The functions of Boards of Guardians as transferred to the councils of Counties and County Boroughs are described in Chapter XXIII.

THE STRUCTURE AND FUNCTIONS OF (a) THE LOCAL BOARDS OF HEALTH; (b) THE METROPOLITAN BOARDS OF WORKS; (c) THE LONDON VESTRIES; (d) THE METROPOLITAN ASYLUMS BOARD; (e) THE METROPOLITAN WATER BOARD.

(a) *The Local Boards of Health.* It is unnecessary for the present purpose to trace in detail the events which followed the Report of the Poor Law Commission issued in 1842, referred to above, and the Report of the Royal Commission which was subsequently appointed. It is enough to mention the passing of the Health of Towns Bill, known as the Public Health Act, 1848, which constituted the General Board of Health, and provided for the establishment of Local Boards of Health in certain areas, where no other responsible body existed. The development, in 1848-9, of the second attack of Asiatic cholera gave the resulting impetus to the study of sanitary affairs, and especially of water supply. The tendency of the Government of that period, influenced partly perhaps by the example of the Poor Law administration, was in favour of central control, and indeed, the career of the first Board of Health was brought to an untimely end on account of its tendency towards over-centralization.

The Local Government Act, 1894, provided for the newly constituted District Councils to replace the Local Boards.

(b) *The Metropolitan Board of Works.* The successor of the Board of Health relied on propaganda, rather than central force, for compelling attention to its edicts, but its procedure did not receive public favour. After obtaining the passing of the Metropolis Management Act, 1855, which set up the Metropolitan Board of Works, the President of the Board of Health initiated measures for distributing powers of the Board between

the Privy Council Office and the Home Office, the scientific or medical side going to the former and the Home Secretary taking over the duties of sanitary administration for which increased provision was made in the Local Government Act, 1858.

Meanwhile, cholera had again shown epidemic prevalence in London and certain other towns, and fever had again and again spread with startling rapidity in some of the towns which had adopted the new system of water-borne sewage disposal. These events were dealt with energetically by the medical department of the Privy Council, whose medical officer, aided by an able staff of medical inspectors (permanent and temporary) produced a series of thought-compelling reports not only on the recurring infectious diseases which prevailed from time to time in different parts of the country, but also on the circumstances which seemed to favour the spread of the diseases now classed as tuberculous; the effect of certain industries on the mortality of infants as well as adults; the influence of house accommodation, or the lack of it, on the conditions of life; the effect of the adulteration of food and drugs; and the principles on which disease should be dealt with, not merely with a view to a cure, but mainly with a view to prevention. The policy of the department in question was to accumulate and present to Parliament such a mass of evidence as could not fail to convince even those whose attitude to sanitary science had hitherto been one of callous unbelief.

In 1888 the functions of the Metropolitan Board of Works, with many others, were transferred to the London County Council, whose powers and duties may be grouped, according to the sources from which they were derived, as follows: (i) those just mentioned, transferred from the Metropolitan Board of Works, as central authority for main drainage; for traffic, including the execution of important street improvements and the purchase of tramways; for the fire brigade; for housing the poor; for supervising the lay-out of streets and the construction of buildings; and for the provision and maintenance of parks and open spaces; (ii) administrative business transferred also in 1888 from the Justices, such as the licensing of houses and other places for music, dancing, or stage plays, the provision and maintenance of mental hospitals, and reformatory and industrial (now approved) schools, duties with regard to county bridges, the appointment, etc., of coroners, and the carrying out of statutory provisions relating to weights and measures; (iii) powers and duties mainly transferred from the London School Board in 1903, coupled with additional powers relating to education; (iv) powers directly conferred by Parliament at various times with regard to a number

of matters, the chief of which are the working of tramways (subsequently transferred to the London Passenger Transport Board), the protection of children, the licensing of employment agencies, massage establishments, motor-cars, etc., the provision of ambulances, museums, and small holdings and allotments; (v) the powers and duties of the Metropolitan Asylums Board and the London Boards of Guardians transferred under the Local Government Act, 1929.

(c) *The London Vestries.* By the Metropolis Management Act, 1855, the organization of the Vestries and of certain district boards created to govern combinations of small parishes was overhauled, and twenty-three vestries and fifteen district boards were constituted. These bodies remained the primary units of local government outside the City until the London Government Act, 1899, abolished them and established in their place the twenty-eight Metropolitan Borough Councils.

(d) *The Metropolitan Asylums Board* was established by an Order of the Poor Law Board, dated 15th May, 1867, pursuant to the provisions of the Metropolitan Poor Act, 1867. This Act empowered the Poor Law Board to combine into districts the unions and parishes of the metropolis as they should think fit, for the purpose of establishing "asylums" for the reception and relief of the sick, insane, and infirm or other class or classes of the poor, and to issue Orders controlling the action of the managers of any such district.

The Metropolitan Asylums District embraced all unions and parishes in London, and the Board dealt with those matters which could be best transacted by a central authority for the whole of the metropolis rather than by each separate board of guardians acting locally. The Poor Law Board and their successors, the Local Government Board, from time to time issued Orders for the direction and guidance of the Metropolitan Asylums Board.

The Board was composed of 73 members, 55 being elected by the London Boards of Guardians, and 18 nominated by the Local Government Board or its successor, the Ministry of Health. The principal work of the Board may be summarized as follows—

*Infectious diseases*—fourteen hospitals for smallpox, scarlet fever, diphtheria, enteric (or typhoid) fever, typhus fever, measles, whooping cough and puerperal fever (with arrangements for dealing with plague and cholera).

*Bacteriological Establishments and Laboratories.*

*Sanatoria* for tuberculous patients (National Insurance Acts, 1911-1913)—two institutions, part of one of the infectious hospitals and part of one of the children's hospitals.

*Parturient women with venereal disease*—to be treated in the

first instance, for the Managers, by the Guardians of the City of London Union.

*Ophthalmia neonatorum*—two small hospitals.

*Notification of infectious disease*—the collection and distribution of information in this matter.

*Mentally defective*—four asylums for imbeciles, including infirmary for aged patients, two industrial colonies for improvable imbeciles and feeble-minded.

*Sane epileptics*—one colony and part of a children's home.

*Sick children*—two hospitals for sick children, four sanatoria and homes (three at the seaside), one home for ringworm and other skin diseases, and two ophthalmia schools.

*Boys*—a training ship *Exmouth I*, and its tender *Exmouth II*.

*Casual poor*—eighteen (twelve closed) casual wards for homeless poor: homeless poor night office.

*Ambulance services*—seven ambulance stations, three riverside wharves with motor ambulances and ambulance steamers.

*Central stores*—for reception of goods and their distribution to the various institutions.

The powers and duties of the Metropolitan Asylums Board were transferred to the London County Council under the provisions of the Local Government Act, 1929, as from 1st April, 1930.

(e) **Metropolitan Water Board.** London was built around a series of wells and rivulets, with the Thames as a highway, and also as a source of supply. Before it became a busy city, Oldbourne (Holborn, as we know it), Langbourn, Holywell, near to where the Strand now is, Clement's Well, Clerkenwell—i.e. the parson's well—and the Fleet—i.e. swift—river supplied the citizens' needs.

The houses multiplied and these wells and rivers became polluted. Henry III gave the citizens of London permission in 1236 to bring water by leaden pipes from Tyburn Springs into the City. That concession was handed over to a man named Sandford. Three hundred years afterwards the Corporation was given the right to bring water from Hampstead, but the City Fathers trembled at the possible cost, and established a conduit of Thames water at Dowgate. A daring individual named Russell proposed in 1580 to bring water from Uxbridge to London, and the great Lord of Burleigh approved it. But that was all that came of it. Two years afterwards, a Dutchman named Morrys appeared on the scene and captivated the hearts of the City Fathers by fixing a water-wheel in one of the arches of London Bridge, and pumping water over the roof of a neighbouring church. The citizens dearly loved their river, and would have none of the new-fangled schemes for bringing water from a distance. So enamoured were they of the Dutchman's scheme

that they gave him a 500 years' lease, and, although the works fell into disuse, they actually remained in the reach of the bridge until 1831, when that venerable structure was pulled down.

Parliament, however, was steadfastly opposed to the citizens drinking Thames water, although it was fairly clear at the Bridge, so they passed an Act giving the Corporation power to bring water from springs at Amwell in Hertfordshire. Once more the City Fathers shrank from the expense, and handed over their powers to Hugh Myddelton, a gentleman who had made a considerable fortune in a silver and copper mine in Wales. This was in 1606, but it took Myddelton two years to overcome the opposition of the landlords. The work took five years to complete, but by the time Myddelton's new river had reached Enfield he had got to the end of his fortune. King James I came to the rescue and paid £6,347 to Myddelton, so as to enable him to complete the river. This represented half the total cost, and when the water company was formed the King held one-half, which represented 36 shares, and the other shareholders, called adventurers, held the other half in the same number of shares.

In April, 1890, one of the thirty-six shares held by King James was sold for £95,000, and in July, 1889, one of the thirty-six adventurers shares was sold for £122,800. Had Charles I not preferred a farm which produced a clear rental of £500 a year for his thirty-six shares, and had the holding remained in the possession of our Sovereigns, the King would now possess £3,420,000 worth of shares in this one company. Supposing the City Fathers had used the powers given to them and also other money in developing the undertaking as the company had done, "the other square mile" would have been a rateless city, and the citizens would have possessed an asset worth about £6,000,000. The premier position of the new River Company is due to the fact that it supplies the purest water, and, therefore, was patronized extensively by the well-to-do throughout the whole of the course of the river to London, where it also commanded a sale among rich City merchants. In 1694 the York Buildings Water Works Company was formed to supply Westminster with water. Their pumping station was at Charing Cross, and it was not until 1829 that that pumping station was finally abandoned. In the meantime—1722—the Chelsea Water Company was started to pump water from the Thames at Chelsea, and in 1785 the Lambeth Company commenced to pump from the Thames at Charing Cross into the houses of the people living in South London. Then the Vauxhall Water Company began in 1805 further to drain the Thames, and were followed in 1806 by the West Middlesex, whose pumping-station was at Hammersmith.

In the same year the East London Company began pumping water from the Lea, and in 1811 the Grand Junction Company took water from the Brent and Colne, eventually in 1820 going to the Thames at a point near Chelsea hospital. The Southwark and Vauxhall Company was formed of the old Borough Waterworks and the London Bridge Waterworks, which in turn were amalgamated in 1845 with the Vauxhall Company. The Kent Company commenced in 1810 to pump water from some old disused works on the Ravensbourne at Deptford which were established 300 years ago, but the water was declared unsatisfactory, and this led to Parliamentary inquiry in 1821 into the condition of the supplies from all companies. Meanwhile, in 1812, the Corporation had disposed of their last vestige of control in water supply by disposing of their rights in Tyburn Springs to the Bishop of London. They were, however, careful to retain land, which was secured when the conduit from the springs was constructed, and to this day one may see at meetings of the Corporation the sealing of leases granted in respect to this property, which yields a good income to the Corporation. The most practicable result of the inquiry of 1821 was the establishment of filter beds by the Chelsea Company.

Another inquiry into the condition of the supply followed in 1827, as a result of a petition presented by Sir Francis Burdett, showing that the people of Westminster were drinking water contaminated with crude sewage, "the drainings of dunghills, the refuse of slaughter-houses, hospitals, and factories," while having to pay double the amount for this disease-breeding liquid than was the case before Parliament recognized the companies. Other inquiries followed, until Mr. Telford was ordered by the House of Commons to report upon the means of supplying London with pure water.

His scheme, which was presented in 1834, provided for a covered new river from a point between Watford and St. Albans to Primrose Hill, where extensive distributing reservoirs were to be constructed. This scheme was estimated to cost one million and three quarters, and would, it was thought, produce more water than twice the amount supplied by three of the five companies on the North of the Thames. Mr. Telford's scheme was soon forgotten.

The Marylebone Vestry was the first public body to realize the municipal duty it owed to the inhabitants of the Borough, and so, in 1818, it submitted a Bill to Parliament asking for powers to supply the people with water, but, after an unsuccessful career in the House of Lords, the measure was withdrawn. An agitation for a cheaper supply was, however, carried on throughout London.



The House of Commons soon became impressed with a belief that, with eight companies supplying London with water, the price would go down and the amount of water supplied would go up. Accordingly, the companies which were not incorporated were given incorporation and also every encouragement to topple over one another in their desire for customers. Unfortunately, Parliament forgot to fix the rate beyond which the charges should not go. It was content with a "reasonable" charge, which the companies interpreted as they pleased. The moment the powers were obtained, scores of canvassers were sent out to set forth the particular virtues of the water supplies and the advantages which would follow the use of one company's water as against another. The fight for customers nearly crippled the companies, so great was the cost. After four years of this expensive competition the companies met and they parcelled out London and its environs, agreeing to forfeit sums of money if one encroached upon the district of another. In order to make local monopoly more secure all the pipes, save those of the company who possessed the district, were taken up and used in the districts allocated by the companies to themselves. The immediate result of this was a big rise in the amount of rate charged for the water. So oppressive became the actions of the companies that men were frightened to seek redress for grievances in a Court of Law, because Parliament had actually allowed some of the companies to walk away with Acts which provided that if a plaintiff got judgment against him, he would have to pay double costs and, in the case of the Grand Junction Company, treble costs.

The Board of Health became alarmed at the filthy character of the water supplied, which undoubtedly propagated the awful epidemic of cholera which raged in London for some time in 1849. Evidence was given and accepted by the Board showing that the water in some of the districts was not only repulsive as a beverage, but unfit for use even in baths, of which there were but a very few in London then. Further, the Board declared that the delivery of such polluted water to the poorer population "disposed, incited, and in many instances, it might be said, drove them to habitual indulgence in ardent spirits and fermented liquors." The Board followed this up by a proposal to drain 150 square miles—a larger tract of land than that now covered by the County of London—in Surrey, and forward the water to London. This land was in the neighbourhood of Bagshot. Other schemes propounded included the turning of Richmond Park into a gathering ground of surface and spring water, and the use of 10,000 acres of Crown Land



around London for the same purpose. The Bagshot scheme, which was finally approved by a Commission, was estimated, with storage reservoirs and pipes, to cost one million, and it was said that the purest water could be brought into the houses in practically unlimited quantities for two pence per week per tenement. The London Spring Water Company proposed to bring water from Watford, the engineer of the Company estimating that he could bring 408,000,000 gallons of pure spring water into the Metropolis every day. Another scheme was brought out for the purpose of delivering 60,000,000 gallons of water from 180 square miles situated between Higham and Blackheath, and the estimated cost of the work was but £150,000. An unsuccessful attempt made by Sir George Gray in 1851 to amalgamate the eight companies into one called the Metropolitan Water Company was followed by fifteen years of quiet. Once, and once only, did the Government of the day realize that the water supply of large towns was a question of national importance and concern. A Commission was appointed in 1866 to ascertain what wholesome water could be collected and stored in natural lakes and reservoirs in the high grounds of England and Wales, and to report which of such sources was best suited for London, and how the others could be used for supplying the principal towns. Unfortunately, the warrant appointing the Commission was revoked the next year, and the Commission was restricted to reporting upon the needs of London and the possibilities of supplying them from the mountainous districts of England and Wales. The scheme favoured most by the Commission was that of Mr. Bateman, who brought water from Loch Katrine to Glasgow. He proposed, at a cost of eleven millions, to dam the tributary streams of the Severn, and to convey the water 180 miles to Stanmore, from which it could be distributed to London at the rate of 230,000,000 gallons a day, without pumping. Unfortunately for Mr. Bateman his scheme was killed by objectors, including the War Office.

The great objection to any long distance scheme is the fact that, if London were to depend entirely upon a supply on such lines, she would not have, in case a hostile force cut the aqueduct, more than three weeks' supply in the reservoirs. Whenever such schemes have been submitted for foreign cities, especially for capitals, the Governments have always held them to be barred by military necessities. London without water would become a pest-hole, and its inhabitants would be decimated. Surrender of the City, if any enemy were able to cut the water supply, would be inevitable unless the Thames were still retained as a source. A scheme was actually brought forward for bringing

water from Thirlmere, Ullswater, and Haweswater, in the Lake District. The estimated cost of constructing the 270 miles of conduits, tunnels, and pipes was thirteen millions.

Another scheme was submitted for bringing a supply from mid-Wales at a cost of seven millions; another one from Derbyshire to cost five millions, and a number of schemes were propounded for canalizing the Thames, tapping the tributaries of the river, collecting all the water in the Lea valley and impounding it, and bringing 14,000,000 gallons a day from the Basingstoke Canal. Since then we have had Sir Alexander Binnie's scheme for bringing water from Wales, but both have been abandoned owing to the opposition of the Welsh people in the districts affected.

The history of the London water question since 1880, when the attempt of the Government of that day to purchase the undertakings of the water companies at an agreed purchase price of £33,018,836 led to their defeat, is too well known to need any reference here.

Under the provisions of the Metropolis Water Act, 1902, the water companies were bought out and the Metropolitan Water Board was created. The Board is probably the largest municipal undertaking in the world, serving a population of 7,500,000 people with an average daily supply of 36 gallons per head. It takes about 58 per cent of its total supply from the River Thames, while the remainder comes from various sources, including the River Lea and New River, and also wells.

Municipal trading thus began with the public health service of water supply and continued through the protective services of markets, the preservation of the peace in lighting and watching developing along lines of invention of gas, electricity and transport.

**Education—School Boards and the Administration of Education as Determined by the Education Acts, 1870, 1876, etc.** When Peel, in 1802, initiated the long line of factory legislation he restricted child labour and required that children working in factories should receive the elements of education. There was no public means of supplying that education, and it was left to the devices of the employers. Whitbread's Bill of 1807 would have supplied that means, but alarms and fears killed the Bill. It took sixty years to quell the controversy that arose. The first step towards public aid came unostentatiously by executive, and not legislative, action. In 1833 the sum of £20,000 was included in the Treasury Minutes for aiding the building of schools, and was distributed through the National Schools Society and the British and Foreign Schools Society representing the Anglican and Non-conformist interests respectively.

The demand for compulsion and greater public control continued until the Education Act, 1870, was passed. This created school boards to supplement the voluntary system where necessary, the boards receiving their supplies by rate aid. The School Attendance Committee Act, 1876, provided for the establishment of Committees of that name wherever a School Board did not exist. Powers to compel attendance did not arrive until Mundella's Education Act of 1880. School Boards did good work in their time, bringing an elementary school within the reach of every child, but the system of administration was not uniform, and a parochial spirit crippled their activities, especially in the villages.

Mr. Balfour's Education Act of 1902 abolished the school districts and boards and school attendance committees, and enlarged the unit of administration to the county and county boroughs with non-county boroughs and urban districts of a prescribed population as Local Education Authorities for elementary education.

The subsequent growth of public education is largely the springing up of special services and the promotion of the health and well-being of school children, and this has imposed enormous, if necessary, burdens upon the Local Education Authorities. It is described in detail in Chapter XXI.

**The Public Health Act, 1872.** In 1872, the President of the Local Government Board introduced a Bill which became the Public Health Act, 1872. It gave new names to old friends in their sanitary capacities. The local Borough Council, Board of Health and Improvement Commissioners became urban sanitary authorities, and the Board of Guardians, in its capacity of administrator of health laws, became the rural sanitary authority. The Act required every sanitary authority to appoint one or more Medical Officers of Health and inspectors of nuisances, and enabled combinations to be formed with the sanction of the Board. It also enabled Poor Law medical officers to be appointed Medical Officers of Health. The excellent system of administration familiar to the Poor Law side of the Board was brought into play with a view to bringing the new Act into operation. The Board's Poor Law inspectors, now known as "general" inspectors, with a few new men appointed as assistant inspectors, divided the country between them and conferred with the local authorities as to the appointment, remuneration, and duties of the new medical officers. But the inspectors, general and assistant, were none of them medical men, and the Board's medical inspectors were not privileged to advise on the important matters at issue. In a very large number of cases the new medical officers

of health were Poor Law medical officers without any special sanitary experience, and the assistance given by the Board's general inspectors, though most valuable as far as they were capable of giving it, did not and could not extend to the professional side in which help might, from the point of view of (Sir) John Simon, have been of great advantage.

Another point of view from which the new arrangements were open to criticism was that the new Board did not ask, and did not permit, the medical officer himself to arrange for the systematic inspection of the country by the medical staff or for the systematic study of conditions of life which might be expected by intelligent medical experience to lead to conditions of disease. These two points indicate divergences of opinion between the two chief permanent officers of the new Board working respectively on the administrative and medical sides. But notwithstanding these divergences, very substantial progress was being made. Local administration was developing and gaining experience; slowly it might be, but surely.

**The Public Health Act, 1875.** In 1874 Mr. Stansfeld ceased to be President, and Mr. Sclater-Booth took his place at the Local Government Board. The new President had previously served an apprenticeship to public life as Parliamentary Secretary of the Poor Law Board, and he was also a prominent county magistrate. He was, therefore, well acquainted with the principles governing local control. In Whitehall he leaned more towards the improvement of sanitary administration than his predecessor had done, and Mr. Disraeli's epigrammatic parody, *sanitas sanitatum omnia sanitas*, found in him a useful exponent. Three great measures were piloted through Parliament by him, the Sale of Food and Drugs Act, 1875, the consolidating statute known as the Public Health Act, 1875, and the Rivers Pollution Prevention Act, 1876. But he was not able to make one working whole of the two able men who could have done so much better for the country if their efforts and ideas could only have been fused and co-ordinated. Sir John Simon ceased to be Medical Officer of the Privy Council and the Local Government Board in 1876, and he was succeeded by Dr. Seaton, who for many years had been his able and energetic assistant.

But Dr. Seaton had not the personal ascendancy of his predecessor, nor had he the capacity of leading and inspiring which was possessed by Sir John Simon. Dr. Seaton's appointment was shorn of some of the powers which his predecessor had possessed, and his three years of office were chiefly remarkable for the care with which he developed the arrangements for administering the Vaccination Acts. He was succeeded in 1879

by Dr. Buchanan, who had long been connected with the department and had been its most brilliant and successful medical inquirer and reporter. Shortly after his appointment, changes in the political world deprived the office of the services of its President, and Mr. Sclater-Booth was succeeded by Mr. Dodson, whose tenure of office had in it nothing requiring special comment. He was responsible for passing through the House of Commons the Alkali and Works Regulation Act, 1881. His successor was Sir Charles Dilke, a statesman of first-class ability, who did something to remedy the conditions which resulted from the too-restricted limitation of the services of the medical inspectors, and who would probably have done much more but for the unfortunate circumstances which terminated all too early the promise of a most useful career.

**Systematic Sanitary Surveys.** Sir John Lambert retired from the office of secretary in 1882, after a strenuous and successful life mainly spent in the public service, and he was succeeded by Sir Hugh Owen, an administrator who brought the Local Government Board to a very high stage of efficiency. The relations between him and the medical officer were always friendly, and in view of the development of cholera in Egypt and in certain Mediterranean ports in 1883, the medical and administrative sides closed up their ranks and worked harmoniously together. The medical inspectors of the department carried out a systematic sanitary survey of the greater part of England and Wales, and especially of the seaport towns, with the view of dealing promptly and effectually with any cases of cholera that might be brought to this country from abroad. Many similar surveys have been made since that time, both as matter of routine and on occasions when special grounds of apprehension seemed to call for such action. Meanwhile the Board's officers had prepared and issued several series of model by-laws in which the architectural, engineering, legal, and medical branches of the office had all contributed their advice and experience. Among the more important codes thus circulated for the guidance of local authorities were those relating to new streets and buildings, nuisances, common lodging-houses, and houses let in lodgings, slaughter-houses, markets, etc.

#### (D) REFORMS AS TO CONSTITUTION AND POWERS OF LOCAL AUTHORITIES

(i) **Municipal Corporations Act, 1882.** This Act wholly repealed the Municipal Corporations Act, 1835, together with forty-two other Acts passed between 1835 and 1882, and partly repealed twenty-six other Acts. It did not introduce much change in the

law as it stood at that time, but its value as a consolidating measure was considerable. Some extensions of the law under this Act may be noticed and it will be observed that they deal largely with financial matters.

Borough councils were empowered to borrow from the Public Works Loans Commissioners money required for any buildings they were authorized to erect or acquire. (Sect. 120.) It was provided that all payments should be made to and by the Treasurer. (Sect. 142.)

Borough councils were authorized to rate owners instead of occupiers to the borough rate. (Sect. 147.)

Where a borough had a local civil court the rights of such courts were preserved. (Sect. 184.)

Provision was made for the amendment of borough charters. Any local authority affected or one-twentieth of the ratepayers of the borough were authorized to present a petition for this purpose. Such a petition was to be dealt with in a similar manner to an application for a new charter. (Sect. 218.)

Any document required to be fixed to the Town Hall was now required to be fixed in a conspicuous place on or near the outer door. If there was no Hall it was to be fixed in some other conspicuous place in the borough or ward to which it related. (Sect. 232.)

It was provided that the acts of a deputy should not be invalidated by any defect in his appointment.

The Act of 1835 applied only to the boroughs set out in Schedule A and B to that Act. In 1876, a Royal Commission was set up to inquire into the unreformed boroughs. They discovered over 100 towns not subject to the Act of 1835. Of these they considered the provisions might be applied to seventy-four and thirty-two were not considered qualified to be boroughs.

The Municipal Corporations Act, 1882, carried these proposals into effect and thus established a uniform system of borough government.

(ii) **Local Government Act, 1888.** *Establishment of County and County Borough Councils.* In 1885 Sir Charles Dilke was succeeded on the Local Government Board by Mr. Arthur Balfour, who was followed by Mr. J. Chamberlain, Mr. Stansfeld (second term), and Mr. Ritchie, all in 1886. Mr. Ritchie's term of office marked a new era in local government and the Board's history by the passing of the Local Government Act, 1888.

The chief object of the Act was to transfer to elected bodies the local government administrative functions previously transacted by the Justices in Quarter Sessions. These functions included the financial business of the county, the maintenance of county

bridges and buildings, the licensing of theatres and places of music and dancing, the provision of asylums (mental hospitals) and reformatory and industrial schools (approved schools), the remuneration of coroners, the registration of electors, the arrangements for parliamentary elections, and the execution of Acts relating to diseases of animals, destructive insects and pests, fish conservancy, wild birds, weights and measures, explosives, and gas meters.

Certain new functions were placed under the control of the county councils at the same time. These were related to the acquisition of bridges, the maintenance of main roads, the prevention of the pollution of rivers, opposition to Parliamentary Bills, and the making of by-laws for the good rule and government of the county outside boroughs.

The constitution of new local authorities except boroughs and the enlargement and alteration of their boundaries were made part of the business of the county councils. They were also made responsible for paying to internal authorities grants previously paid directly by the Exchequer. They were empowered to appoint County Medical Officers of Health (this became obligatory in 1909) with a supervisory jurisdiction over district medical officers. This has brought into existence a highly trained body of officers upon whom devolves the responsibility of guiding and directing the health administration of the whole county and facilitated the transfer to the county of particular aspects of health administration, such as tuberculosis, midwifery, blind welfare, and hospital organization.

The constitution of the new councils was based on borough organization, although there are many points of distinction. They were not given a charter.

Their president is called the chairman and not the mayor, and he is *ex officio* a Justice of the Peace for his year of office only. The elections are held in March every three years, all the councillors retiring together. Electoral districts take the place of wards and there is one councillor elected for each. The body incorporated is the chairman, aldermen and councillors. In boroughs it is the mayor, aldermen and burgesses. The quorum is one-quarter of council and not one-third as in the case of boroughs.

A reorganization of the financial arrangements between the Exchequer and the local authorities was undertaken at this time. The proceeds of certain licences and a share of the probate duties were assigned to the counties and a method provided for the distribution of the money between the various local authorities. This is dealt with fully in Chapter XXVI.



Power was given to the county councils to delegate the exercise of their functions to committees, and in some instances to internal local authorities.

The control of the county constabulary was not transferred to the county councils, but placed in the hands of a Standing Joint Committee, consisting of magistrates appointed by quarter sessions and county councillors appointed by the county council in equal numbers.

The larger boroughs, those of 50,000 population in 1881 (this fixture of 50,000 was increased in 1926 to 75,000 and in future there will not be much chance of obtaining county borough status unless the population is 100,000) were able to evade any administrative control by the new county council. These were created county boroughs and are administrative counties of themselves, being almost entirely free from relationship with the county council. Elaborate provisions were made for equitable financial adjustments to be made between the county and county borough councils.

In the case of small boroughs with separate courts of quarter sessions (those under 10,000 population in 1881), the county council took over the duties in relation to coroners, food and drugs, reformatory and industrial schools (approved schools), fish conservancy, and explosives.

The borough with under 10,000 population was considered to be a rather weak entity and the county councils took over the functions relating to food and drugs, diseases of animals, destructive insects, gas meters, and weights and measures. Such boroughs were also deprived of their separate police force which became merged with the county constabulary.

The Act was modified in its application to the Metropolis. Parts of Middlesex, Surrey, and Kent were severed to form a separate county under the London County Council, but provision was made for the City of London to continue as a separate entity. The Asylums Managers and the Metropolitan Board of Works were abolished and their functions and liabilities transferred to the London County Council. The number of councillors was fixed at double the number of the Members of Parliament for the area and the aldermen were not to exceed one-sixth the number of councillors.

Provision was made for London to have a separate sheriff, commission of the peace, and court of quarter sessions, and for the last named to have a paid chairman.

The vestries and district boards were left substantially unaffected and to be dealt with later in the London Government Act, 1899.



(iii) **Local Government Act, 1894.** The purpose of this Act was to carry into effect proposals which were envisaged during the passing of the Act of 1888 in order to make more rational the system of local government in county districts by the establishment of rural and urban district councils. It is also frequently called "the peasants' charter" because it extended democratic local government to parishes in rural districts by the creation of parish meetings and councils.

The local sanitary authorities in rural areas before the passing of this Act were the Boards of Guardians and in urban areas the borough councils, improvement commissioners, or local boards of health. Excepting the borough councils, these were displaced by the rural or urban district council. The persons elected to the rural district council became also the local representatives on the Board of Guardians for the Union. Separate elections for Guardians continued in urban areas.

County councils were given wide powers to issue orders for the alteration of the status or boundaries of internal areas except boroughs. In particular, they were to provide for parishes to fall within one district and districts within one county.

The functions of the former sanitary and highway authorities were transferred to the new district councils. Also those of the Justices with regard to the licensing of gang masters, game dealers, passage brokers, emigrant runners, knackers' yards, the certification of pawnbrokers, the abolition of fairs, the alteration of fair days, the protection of child life and the control of petroleum storage. The constitution and functions of district and borough councils are dealt with in Chapters VIII and IX.

In the rural parishes provision was made for the calling in every parish of parish meetings, being assemblies of the electors for the parish. In the more populous parishes arrangements were made for the election of parish councils to take over certain of the functions of the parish meeting and to acquire certain additional functions. The constitution and functions of these are dealt with in Chapter VII.

(iv) **The London Government Act, 1899.** The chief purpose of this Act was to replace the numerous vestries and district boards by a smaller number of local authorities more in harmony with modern principles of local government.

With the exception of Penge and the City, London was divided into twenty-eight metropolitan boroughs set out in the first Schedule to the Act. The constitution of the new metropolitan borough councils was based upon the same principles as the provincial borough councils but there were some points of difference. The number of aldermen was fixed at one-sixth the number

of councillors. The total membership of the council was not to exceed ten aldermen and sixty councillors. One-third of the councillors retire each year, but the council may resolve to have triennial general elections. Such a resolution requires a two-thirds majority, being not less than one-half the total membership. The Local Government Board could veto this proposal or grant it by order. Women, who were to be eligible for election in the original proposals, were disqualified from being elected under the Act.

The functions of the councils were left to be determined by schemes prepared by commissioners appointed under the Act and confirmed by Order in Council or Act of Parliament.

The councils took over, with certain exceptions, the work of the vestries, district boards, burial boards, Baths and Wash-house Act Commissioners and Library Act Commissioners. They also became the overseers of the poor for their boroughs, except with regard to the voters and jury lists.

The sanction of the London County Council was required for the exercise of borrowing powers, subject to appeal to the Local Government Board.

Provision was made for the transfer of the powers of the London County Council to the borough councils, and *vice versa*, by the Local Government Board on the application of the county councils and the majority of the borough councils.

Each borough was required to appoint a finance committee and certain financial regulations were imposed. All accounts were made subject to audits by the district auditor.

The town clerks were made the clerks to the borough assessment committees.

The county councils of London, Essex, Middlesex, Surrey, and Kent were allowed to be heard on any proposed alteration of the London area. The Inner and Middle Temples were deemed to be within the City.

The present government of London is dealt with in Chapter XXX.

#### (E) ACTS RELATING TO THE HOUSING OF THE WORKING CLASSES

The seeds of the modern deficiency in satisfactory housing accommodation may be considered to have been sown with the coming of the law of settlement in connection with the poor law in 1662. Every person occupying premises under £10 annual value was removable to his place of settlement. A house of £10 annual value and over could, therefore, be considered as providing a potential settlement for some one who might become a

charge on the poor rate. Not only were builders loath to build such houses, but existing houses were demolished for the same reason.

The drift to the town caused by the agrarian and industrial revolutions has already been described. The country was totally unprepared for the changes brought about by the factory system. Houses were thrown up in close proximity to factories without consideration of structural worthiness, drainage, or sanitary arrangements. The streets were of the minimum dimensions and the aim was to pack as many houses as possible on the smallest possible space. They were frequently built in back-to-back fashion, without passages for ventilation or sunlight, or in the court type with the minimum amount of space. These types were not generally made illegal until 1909, although Liverpool obtained powers to prohibit such building in future in the Liverpool Building Act, 1842. The first general legislation was passed in 1851. Although in opposition at the time, it was through the efforts of the Earl of Shaftesbury (then Mr. Ashley) that two Acts found their way on to the statute book.

The Common Lodging Houses Act, 1851, gave local authorities their first power of supervision and inspection. Under the Labouring Classes Lodging Houses Act urban authorities of 25,000 population were empowered to provide new accommodation and to borrow for the purpose. Small advantage was taken of this power, mainly on the ground of cost. There was no power of compulsory purchase, and landowners held out for high prices. The administrative procedure was also very cumbersome. In 1866 loans from the Public Works Loans Board were made available for the purpose. William Torrens, a Cobdenite M.P., was responsible for the passing of an Act of 1868 facilitating the closing of insanitary houses. In 1875 Mr. R. A. Cross was successful in obtaining powers for urban authorities (25,000 population) to deal with insanitary areas. The Public Health Acts of 1872 and 1875 strengthened the powers of local authorities by giving them wider powers to deal with drainage and sanitation to regulate lodging-houses, to control cellar dwellings, and to provide better water supplies.

Boroughs were specially empowered by the Municipal Corporation Act, 1882, Sect. III, to lay out any land in their possession for building labourers' dwellings, and to lease land for the same purpose for the maximum term of 999 years.

The previous legislation on the subject was consolidated in the Housing of the Working Classes Act, 1885. For the first time, urban authorities were required to enforce certain provisions as a duty, and the limitation to a population of 25,000 was abolished.

The Housing of the Working Classes Act, 1890, is famous for embodying in one Act the triple conception of housing requirements, the control of individual houses, the treatment of insanitary areas, and the provision of new accommodation. Powers of compulsory purchase were now granted. This Act remained the principal Act on the subject until 1925.

The subject of Housing is dealt with in Chapter XIII.

#### (F) TWENTIETH CENTURY LOCAL GOVERNMENT.

(i) The Education Acts 1902 to 1921. School Boards did good work in their time, assuring that an elementary school was within the reach of every child. They suffered, however, from the effect of the smallness of the unit of administration, and it was becoming evident that it did not conduce to economy. Moreover, in many districts, the administration suffered from the effect of parochialism which stultified true progress. Mr. Balfour's Education Act, 1902, abolished the school attendance committees and school boards, and transferred control of education to new local education authorities. For higher education, the county and county borough councils were made responsible in all cases. For elementary education, urban district councils with a population of over 20,000, according to the 1901 census, and boroughs with a population of over 10,000, according to the same census, became the local elementary education authorities, unless they relinquished these powers to the county council. In other cases the county and county borough councils became responsible for all forms of education. The local education authorities were required to appoint an education committee constituted in accordance with a scheme of administration approved by the Board of Education. Provision was made for their functions to be delegated to the committee, but the raising of a rate or the borrowing of money could not be delegated. Persons not members of the council could be appointed to the committee provided a majority were members of the council.

Whilst the control of religious instruction was left to the managers of non-provided or voluntary schools, secular education was made the liability of the local education authority and they became responsible to maintain and keep efficient all necessary non-provided and provided schools.

From 1902 to 1914, the striking feature of educational developments was the growth of the "special services." In 1906, the local education authorities were empowered to make arrangements for the provision of meals to necessitous scholars. In 1907, they were authorized to attend to the health and well-being of scholars, and the provision of vacation schools and camps, play centres,

school baths and gardens, and to award scholarships and bursaries. The duty of medical inspection was imposed upon them. In 1909, power to provide medical treatment and to recover the cost from parents able to pay was granted and school clinics were established.

In 1910, they were authorized to make arrangements for vocational guidance and set up juvenile employment bureaux. Under the Mental Deficiency Act, 1913, it became their duty to ascertain those scholars over 7 years of age who were mentally defective and make separate provision for them until the age of 16, and, then, upon leaving school, to notify the Committee for the Care of the Mentally Defective of this fact.

In 1918, the Fisher Education Act abolished the half-time employment system for children under 14 years. Local education authorities were empowered to establish nursery schools or classes for children between 2 and 5.

The grant payment system was also reorganized when fifty-seven separate types of grants were abolished in favour of a grant paid according to a formula. In the same year, the responsibility for choice of employment functions was extended to young persons up to 18 years; and, in 1923, local education authorities were required to administer unemployment benefit in all these cases or surrender their functions with regard to choice employment to the employment exchanges.

In 1919, the Libraries Act provided that any future adoptions of the Act should be by the county councils outside county boroughs, and that the administration of the function should stand referred to the county education committee.

The Education Act, 1921, repealed and re-enacted in a consolidated form about twenty-two Acts of Parliament.

The Metropolis was excepted from the provisions of the Education Act, 1902, but the new system was extended to London in a modified form the following year.

THE EDUCATION (LONDON) ACT, 1903, abolished the London School Board and provided for the establishment of a statutory Education Committee of the London County Council. The number of members of the School Board was 55, and the original intention was to add to this number 42 persons in respect of secondary education, to make a Committee of 97. Of these, 72 were to owe their membership to popular election and 25 to be additional members. Of the former, 36 were to represent the London County Council, 2 the City, 2 Westminster, 27 the borough councils (1 each), and 5 to be members of the abolished School Board. There was opposition to the size of this Committee and also to the direct representation of the local authorities. The Act provided for the Committee to be a Committee of

the London County Council constituted according to a scheme drawn up by that Council. This scheme provided for a Committee of 48 persons of whom 38 were members of the County Council and of the remaining members 5 were women and 5 members of the former School Board.

The functions of the Committee were to consider and report on all matters relating to education and industrial and reformatory schools (now approved schools), except the powers of raising a rate or borrowing money. They were responsible for the maintenance and management of all land, buildings, equipment, stores, furniture or apparatus connected with the Council's educational work. Educational works and contracts authorized by the Council were to be carried out under the direction of the Committee. They were empowered to order all stores, books, stationery and school furniture and carry out current repairs to the Council's school buildings. They were responsible for the control of all officers and servants in the education department, all changes in or relating to the teaching staff in provided or non-provided schools being reported to the Council.

Provided schools were to have a body of managers, two-thirds being appointed by the local borough council, the City being in the same position as a metropolitan borough under the Act, and the other third by the county council. The borough councils had to be consulted as to sites for new elementary schools in their boroughs and no site could be compulsorily acquired without the consent of the borough council, unless the Board of Education agreed.

These Acts have been almost wholly repealed and re-enacted in the Education Act, 1944. The present law is dealt with in Chapter XXI.

(ii) **The Local Government Act, 1929.** The object of this Act was to remedy certain defects in the existing system of local government. There had been several inquiries into the poor law system resulting in recommendations to assimilate that system with the general organization of local government. A number of services had been inaugurated outside the poor law system creating overlapping, some confusion, and waste. This Act abolished the Boards of Guardians and Poor Law Unions and transferred the functions of the Guardians to the councils of counties and county boroughs. Modifications applying these provisions to London were made in Sect. 18 but these are now incorporated in the Poor Law Act, 1930.

Whilst the identity of the poor law was retained, provision was made for facilitating the future transfer of poor law services to the identical services administered outside the poor law, such

as education, mental deficiency, tuberculosis, hospitals and maternity and child welfare—a system generally summed up in the term “the break up of the poor law.” (Sect. 5.)

In the transfer of these functions certain changes were made in order to make more rational the scheme of local government administration. The function of infant life protection was made part of the maternity and child welfare service of welfare authorities. Thus, where a district council carried out the maternity and child welfare service, they took over infant life protection for their district. This function never was a poor law service in London. Nevertheless, it now became part of the maternity and child welfare service of the London County Council and the Common Council of the City. (Sect. 2.)

Functions relating to vaccination were separated from the poor law and transferred to the public health service. In London this service became part of the health services of the metropolitan borough councils and the Common Council of the City. (Sect. 2.)

The new authorities became responsible for the administration of the institutions transferred from the Guardians; but, as county councils had no power of providing general hospitals, this function was now conferred upon them and in this manner they were enabled to co-ordinate the whole of the hospital services of the county. (Sect. 14.)

The function of registration of births, deaths, and marriages was also divorced from the poor law service. Each county and county borough council were required to draw up a scheme of administration for the approval of the Minister of Health showing their proposals for carrying out this service. The clerk of the county council and the town clerk of the county borough was made responsible for the supervision and administration of this service. (Sect. 21.) In London the metropolitan boroughs and the Common Council of the City became the responsible authorities. (Sect. 27.)

With regard to highways, the county council became responsible for all roads in rural districts and classified roads in urban districts. (Sect. 29.) A reasonable degree of elasticity was introduced by the Act, however, whereby the large urban districts were empowered to acquire the right of maintenance of their classified roads, urban district councils were able to agree to the county council taking over responsibility for their unclassified roads, and county councils could delegate their road functions to district councils. (Sects. 30–36.) These provisions do not apply to London. (Sect. 45.)

County councils were brought into the question of development planning by the Act. They were made entitled to act jointly



with other local authorities in the preparation or adoption of schemes or could be combined with other local authorities for the purpose by an order of the Minister of Health. Moreover, authority was provided to make the county council the responsible authority for the enforcement and execution of a scheme. District councils were empowered to relinquish their planning functions to the county council. As the London County Council was already the authority in London the only provision applying to them was the power of joint action. (Sects. 40-45.) The planning provisions have been incorporated in the Town and Country Planning Act, 1932.

County councils were required to undertake a general review of the districts within the county and were empowered to make subsequent periodical reviews. Adjustments of boundaries can apply even to non-county boroughs, but the status of a borough cannot be affected. County boroughs could only be affected by agreement. (Sects. 46-49.) These provisions are now included as amended in the Local Government (Boundary Commission) Act, 1945.

The Act contained a similar but wider power to that contained in Sect. 5 (3) of the London Government Act, 1899. Any of the powers and duties of the London County Council, except poor law functions, may be transferred or delegated to the metropolitan borough councils by order of the Minister of Health. Applications for this purpose may be made by the London County Council or any body representative of the metropolitan borough councils. (Sect. 64.)

The rest of the Act of 1929 deals with the derating of agricultural, industrial and transport properties and the changes introduced into the Exchequer grant system. These are dealt with in detail in Chapters XXVI and XXVIII respectively.

(iii) **The Poor Law Act, 1930.** The work of consolidating poor law legislation had been accomplished by the Poor Law Act, 1927, which was a monumental work embracing the relative parts of more than 100 statutes from the days of "Good Queen Bess." The fundamental changes brought about by the Local Government Act, 1929, however, rendered much of the Act of 1927 out of date and hence the necessity for a re-consolidation of the law. No changes in the law were introduced with one slight exception. Part VI of the Act, which applies to rules, orders and regulations made by the Minister of Health, does not apply to an order made under Sect. 3 which empowers the Minister by order to combine two or more councils, whether of counties or county boroughs, for the administration of poor law functions. (Sect. 143.)



The Act of 1930 left outstanding certain provisions of the 1927 Act which affect rural district councils only. All these, except the part which remained of Sect. 207, were repealed by the Local Government Act, 1933. All that now remains of Sect. 207 provides that the Inner Temple, the Middle Temple, and Gray's Inn, but not Lincoln's Inn, must not be added to any parish. The Local Government Act, 1929, however, particularly includes the Inner Temple and the Middle Temple in the City of London assessment area. (Sect. 18.)

The London County Council were given a general power to refer or delegate any of these poor law functions, except rating and borrowing, to any committee. The provisions respecting Guardians Committees do not apply, but the Council have general power to appoint "local committees" and delegate their powers of granting relief to these. (Sect. 122.)

The functions of public assistance authorities are dealt with in Chapter XXIII.

(iv) **Local Government Act, 1933.** This Act resulted from the labours of the Local Government and Public Health Consolidation Committee set up in 1930 by the Minister of Health. The Committee was set up as a result of the findings of the Royal Commission on Local Government (1923) and their recommendation that the work of consolidation should be taken in hand immediately. The Committee was presided over by the late Viscount Chelmsford and, subsequent to his death, by the Right Hon. Lord Addington, and will continue its labours after the present emergency.

The terms of reference of the Committee were—

With a view to the consolidation of the enactments applying to England and Wales (exclusive of London) and dealing with (a) local authorities and local government, and (b) matters relating to the public health, to consider under what heads these enactments should be grouped in consolidating legislation and what amendments of the existing law are desirable for facilitating consolidation and securing simplicity, uniformity and conciseness.

In March, 1933, the Committee issued an Interim Report (Cmd. 4272, price 2s.) accompanied by a Draft Bill.

In their Report the Committee state that they omitted from the Draft Bill as inappropriate the following matters—

- Police and the Administration of Justice.
- Municipal and Parochial Charities.
- Highways and Bridges.
- Rating.
- Exchequer Grants.
- Corrupt and Illegal Practices.

Superannuation of Officers.  
Special Areas.

The Draft Bill was introduced into the House of Lords and referred to a Joint Select Committee. After being amended in certain directions it passed into law as the Local Government Act, 1933. This Act covers the first part of the Committee's terms of reference and the Committee proceeded to the consideration of public health legislation. Some changes in the law with the passing of the Local Government Act, 1933, are described below.

### *Part I. Constitution and Elections*

To avoid frivolous candidatures at local elections, a candidate nominated for more than one electoral division or ward must choose the one in which he intends to go to election. Written consent to nomination must be given by a candidate.

A new time-table for proceedings at county and borough council elections is provided in the Second Schedule to the Act.

The chairman of a district council may call a meeting of the council at any time. This brings district councils into line with other authorities.

District councils may appeal to the Secretary of State where the county council refuse or neglect to alter electoral divisions or the number of county councillors. (Sect. 11.)

Boroughs are empowered to hold land for the purposes of their constitution without licence in mortmain. (Sect. 17.)

The mayor of a borough is exempt from making the declaration required from other Justices of the Peace on appointment. (Sect. 18.)

The Chairman of a county council continues to hold office until his successor is duly appointed, and continues a member of the council, notwithstanding that his triennial period as councillor may expire. (Sect. 33.)

The Chairman of a parish council similarly continues his membership of the Council. (Sect. 49.)

### *Part II. General Provisions as to Members and Meetings of Local Authorities and Elections*

A paid officer of a local authority employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority, is disqualified for being elected as being a member of that other local authority. (Sect. 59.)

Payment of fines on resignation of members of councils has been abolished. (Sect. 62.)

When the filling of a casual vacancy in a council is combined with an ordinary election the person with the smallest number of votes fills the casual vacancy. In case of a tie it is decided by lot. The same system applies in the case of two casual vacancies for different periods. (Sect. 67.)

If an election is void through death or invalid nominations the returning officer or mayor arranges for a new election. In the case of boroughs and counties this takes the place of mandamus from the High Court. (Sect. 72.)

In place of the former disqualification from membership of a council on account of financial interests, a member of a council or a committee has now to disclose the fact at the meeting at which it is considered and refrain from taking any part in the proceedings or voting thereon. The local authority may provide for his exclusion from meetings on such occasions by their standing orders. (Sect. 76.)

An officer is required to give notice of any pecuniary interest which he may have in any contract with his authority or any committee or joint committee. (Sect. 123.)

As a member of a parish council is not necessarily a local government elector for the parish he may be disqualified from attending the parish meeting. As such a person may be chairman of the council and, therefore, chairman of the meeting, he is formally qualified to attend, but not to vote except in the case of a tie. (Sect. 77.)

The costs of a returning officer in legal proceedings are payable by the local authority. (Sect. 83.)

The procedure for taking action against a person who has acted when disqualified is made for all councils. (Sect. 84.)

### *Part III. Committees and Joint Committees*

All local authorities have now a general power of appointing committees and co-opting outside members thereon, providing at least two-thirds of the total are members of the authority. Any local authority may combine with another or others to form a joint committee for any joint interest, but this does not affect any special legislation on the subject, such as the Poor Law Act, 1930, Sect. 3. The power to delegate functions, except rating and borrowing, is made general. Members of committees are subject to the same disqualification as members of the authority. (Sect. 85.)

A parish council or meeting may petition the Minister of Health against the refusal of a rural district council to appoint a parochial committee for a contributory place. (Sect. 87.)

Persons disqualified for membership of a local authority are

also disqualified from committees, sub-committees, joint committees. Teachers are excepted in the case of education, mentally defective, and libraries committees. (Sect. 94.)

#### *Part IV. Officers*

A vacancy in the office of medical officer of health or sanitary inspector must be filled within six months unless the Minister of Health extends the period. (Sect. 107.)

Security must be taken from all officers entrusted with money and may be taken from other officers. The fidelity of any officer may be insured. (Sect. 119.)

Reasonable notice for the termination of an appointment may be agreed upon between a local authority and an officer. This reverses the decision in the Dagenham Case, 1929. (Sect. 121.)

A member of a local authority must not be appointed to any paid office of that authority until he has ceased to be a member for twelve months. (Sect. 122.)

In place of inhabitant householders a district council may now petition the King for a charter of incorporation. The council must pass a resolution by an absolute majority of the council at a meeting specially convened for the purpose. The resolution must be confirmed by a like majority at a second meeting specially convened not earlier than a month later. (Sect. 169.)

#### *Part VI. Alteration of Areas*

See now the Local Government (Boundary Commission) Act, 1945, Chapter I.

#### *Part VII. Acquisition of and Dealings in Land*

Local authorities are empowered to acquire land by agreement, and with the consent of the appropriate Minister, in advance of requirements for authorized purposes. (Sect. 158.)

The provisions of the Public Works Facilities Act, 1930, are made general provisions in the Act. They facilitate the compulsory acquisition of land by means of an Order confirmed by the Minister of Health. (Sect. 161.)

The method of challenging a compulsory purchase order under the Housing Act, 1936, following the Liverpool Corporation (Yaffe) Case, 1931, is also made a general provision. An application must be made within two months to the High Court. (Sect. 162.)

#### *Part VIII. Expenses*

Rural district councils are brought into uniformity with other local authorities in so far as a general rate fund must be established in respect of both general and special expenses. Separate

accounts must be kept of general and each class of special expenses. (Sect. 191.)

### *Part IX. Borrowing*

With regard to borrowing the Act has assimilated these powers by providing a single code based on the former Public Health Acts provisions. Rural district councils may now borrow by the issue of stock. (Sect. 196.) The whole of the revenue of a local authority is charged as security for their loans and all sums borrowed rank equally and none have priority of payment over others. (Sect. 197.)

Returns in respect of borrowed money must be transmitted to the Ministry of Health within one month of the request. (Sect. 199.)

The unexpended balance of a loan may be used for any authorized capital purpose. (Sect. 202.)

Lenders of money are relieved from inquiry or responsibility regarding the legality or application of loan money. (Sect. 203.)

The person registered as mortgagee is to be deemed the person entitled to a mortgage unless the High Court, or for sums not exceeding £500, the County Court, order the rectification of the register. (Sect. 208.)

A local authority is prohibited from taking notice of any trust affecting a mortgage. (Sect. 209.)

The receipt given by one joint holder of a mortgage is a sufficient discharge for any interest thereon. The guardian of an infant may give a discharge for any money payable to the infant under the mortgage. (Sect. 210.)

Certain new conditions are laid down for regulating sinking funds of local authorities. (Sects. 213 and 214.)

### *Part XII. By-laws*

Proposed by-laws for good government do not now require a two-thirds majority for their adoption. In place of fixing proposed by-laws to public buildings they must be deposited for inspection. They operate upon confirmation by the Home Secretary or the Minister of Health in place of not being disallowed by the Privy Council. District councils are empowered to enforce the by-laws of the county council and are entitled to a copy of every by-law made. (Sects. 249 and 250.)

### *Part XIII. Promotion of and Opposition to Local or Personal Bills by Local Authorities*

The cost of promoting or opposing Parliamentary Bills may be charged as special expenses in rural districts. (Sect. 257.)

*Part XV. General Provisions*

The contracts of a local authority must be made in accordance with standing orders which shall require public notice of the proposed contract to be given or tenders invited. (Sect. 266.)

All local authorities may now accept gifts of property. Urban authorities previously had to be invested with the powers of parish councils by the Minister of Health. (Sect. 268.)

Vestries and churchwardens have been shorn of all their civil powers in urban areas. This previously applied in rural parishes and in Wales and Monmouthshire. The powers become the functions of borough and urban district councils. (Sect. 269.)

Reference to population means the figures of the last census contained in the report of the Registrar-General. (Sect. 296.)

The Act repealed statutes or parts of statutes going back to the County Buildings Act, 1826. Many provisions are still outstanding in former local government statutes, however, including parts of the Municipal Corporations Acts, 1882, and the Local Government Acts, 1888 and 1894.

The Act does not apply generally to London. (Sect. 308.) Sects. 40 to 44 of the Local Government Act, 1888, which apply the provisions of that Act to the Metropolis are not repealed. Sects. 71 and 73 of the Second Schedule, which provide for the audit of the accounts of the London County Council, is repealed, as are also Sects. 81 and 82 which deal with joint committees.

The London Government Act, 1899, is not affected except in two matters. Sect. 8 (4) which relates to joint committees is repealed, as is also Sect. 14 which provides for the audit of accounts of metropolitan boroughs. The Act of 1933 applies to London the provisions of that Act relating to joint committees (Sect. 97), accounts and audit (Part X), and local financial returns (Part XI). (Sects. 243 and 248.)

(v) **Public Health Act, 1936.** The Second Interim Report of the Local Government and Public Health Consolidation Committee, together with a draft Public Health Bill, was presented by the Minister of Health to Parliament in January, 1936. This Report contained a full statement of the principles upon which the work of the Committee had been carried out and of the more important amendments of the law which they recommended in the interests of simplification and clarity. In addition, an Appendix to the Report drew attention in great detail to the various drafting and other amendments made and the reasons which had led the Committee to propose alterations of the law. The proposals with regard to by-laws are in a large measure

founded on a valuable Report made by a Departmental Committee in 1918 (Cmd. 9213).

The Public Health Bill, 1936, was not so extensive as was at one time expected. It is explained in the Report that a Bill covering all the provisions of the Public Health Acts and their associated statutes would include not less than 1000 clauses. Instead of producing a Bill of this size, the Committee decided that it would be expedient to produce several Bills of what they call "moderate length." An examination of the provisions of the Public Health Acts, as amended by the Local Government Act, 1933, showed that they might be roughly classified as follows—

(a) provisions of a strictly public health character relating to the prevention and treatment of disease, that is, as regards environment, to such matters as drains and sewers, buildings, water supply, and the abatement of nuisances, and as regards personal hygiene, to such matters as the provision of hospitals, maternity centres, etc.;

(b) provisions with regard to streets and building lines;

(c) provisions dealing with food;

(d) provisions dealing with public amenities—recreation grounds, open spaces, etc.;

(e) provisions as to the licensing of hackney carriages, pleasure boats, servants' registries, etc.;

(f) provisions dealing with burial and cremation;

(g) provisions of a "police" character, e.g. offences in streets and places of public resort;

(h) provisions dealing with river pollution.

It was therefore decided to deal at first only with the first of these. The result was a Bill of twelve Parts, 334 clauses, and two schedules. A second draft bill produced by the Committee has been passed into law as the Food and Drugs Act, 1938.

Presumably the Committee will continue its work and will, in course of time, produce Bills covering all the other headings within the terms of reference. This does not necessarily mean seven Bills. Some of the subjects may be combined. And if the stated ideals of Bills of roughly 350 clauses each is to be attained it seems that only three Bills may be required.

The Public Health Act, 1936, is by no means just another consolidation Act. It contains more amendment of substance than the Local Government Act, 1933. Many of the provisions of the Public Health Acts are left outstanding for future consolidation.

Of the Public Health Acts proper only four were wholly repealed, namely—

The Public Health (Water) Act, 1878;  
 The Public Health (Fruit Pickers' Lodgings) Act, 1882;  
 The Public Health (Ships, etc.) Act, 1885; and  
 The Housing of the Working Classes Act, 1885.

To these must be added certain Acts which are commonly classified as Public Health Acts, though they are not within the statutory definition—

The Public Health Act, 1896;  
 The Public Health (Ports) Act, 1896;  
 The Cleansing of Persons Act, 1897;  
 The Public Health Act, 1904;  
 The Public Health (Prevention and Treatment of Diseases) Act, 1913; and  
 The Public Health (Officers) Act, 1921.

Other Acts wholly repealed were—

The Baths and Wash-houses Acts;  
 The Canal Boats Act, 1884;  
 The Infectious Disease (Notification) Acts;  
 The Notification of Births Acts;  
 The Maternity and Child Welfare Act, 1918; and  
 The Nursing Homes Registration Act, 1927.

All these statutes, together with various provisions of some thirty other Acts, are repealed from the commencement of the Act, viz. 1st October, 1937.

The Isolation Hospitals Acts, 1893 and 1901, were repealed two years later.

The Public Health Act, 1936, comprises twelve Parts, 347 sections and three Schedules, as described in Chapter XII. There are three Schedules, viz.—

First Schedule—Provisions as to Medical Officers of Health and Sanitary Inspectors of Port Health Districts.

Second Schedule—Sections of Act extending to London for certain purposes.

Third Schedule—Enactments repealed.

There are so many amendments and new provisions incorporated in the Act that only the shortest outline can be provided here. Many of these are not new in so far as they are taken from precedents in local Acts. The numbers in brackets are those of the new sections to the Act.

#### *Part I. Local Administration*

The previous Port Sanitary Authorities are now known as Port Health Authorities. (Sect. 5.)



*Part II. Sanitation and Buildings*

Sewers no longer vest automatically in local authorities. Owners may apply to the local authority for sewers to become vested in the local authority as public sewers. The owner has the right of appeal to the Minister of Health against the refusal of the local authority to adopt a sewer. (Sect. 17.)

Agreements may be entered into with the county council for the use of highway drains and sewers for sanitary purposes or for public sewers to be used for the drainage of highways. (Sect. 21.)

Where private persons are responsible for the maintenance of a length of sewer the local authority may carry out the work of maintenance and recover the cost from those persons. (Sect. 24.)

A local authority may require buildings to be drained in combination by means of a private sewer. They may carry out this work for the owners and recover the cost. (Sect. 38.)

Occupiers may be required to provide proper flushing apparatus for water-closets and protect them from frost. (Sect. 51.)

When considering building plans for the building or extension of a house a local authority may require means of access to a house for the removal of refuse to be provided. (Sect. 55.)

Owners of certain buildings more than twenty feet high may be required to provide any necessary means of escape in case of a fire. (Sect. 60.)

New by-laws dealing with the structure of buildings apply to existing buildings when they are altered or extended but only to that extent, and also where there is material change of user. (Sect. 62.)

With the consent of the Minister of Health a local authority may relax the requirements of their building by-laws where they would operate unreasonably. (Sect. 63.)

Any dispute arising with regard to the operation of building by-laws may be finally determined by the Minister if both parties agree to reference to him. The Minister may state a special case for the decision of the High Court. (Sect. 67.)

Building by-laws must now be revised every ten years unless their application is extended by the Minister of Health. (Sect. 68.)

Building by-laws of a rural authority when open to public inspection must be accompanied by information as to any urban powers they possess and whether certain sections of the Acts of 1875, 1890, and 1907 have been brought into operation. In any district in which there are local Acts powers respecting building by-laws these must also be appended. (Sect. 70.)

By-laws may require owners to use regulation dustbins and regulate the deposit of liquid matter and refuse therein. (Sect. 72.)

Refuse may be removed or cesspools cleansed for owners or occupiers and a charge may be made. (Sect. 74.)

#### *Part IV. Water Supply*

The Minister of Health may, by order, authorize a local authority, under certain prescribed conditions, to supply water to premises outside their district. (Sect. 113.)

Statutory water undertakers having consented to the supply of water within their area by a local authority may revoke the consent by one month's notice and give the supply themselves. The reasonable expenses of the local authority in giving the supply must be paid. (Sect. 117.)

A local authority may pay for a supply of water or give guarantees to the person giving a supply to their district. (Sect. 123.)

Unnecessary or polluted water sources may be closed down by a local authority or the use thereof restricted. (Sect. 124.)

Water may be charged for by metered supplies if required for purposes of trade, public institutions, licensed premises and certain boarding houses. Unusual use of domestic supplies may also be charged by meter. (Sect. 127.)

Owners of tenements who are compulsorily rated instead of occupiers are entitled to a compounding allowance on water rate under the same conditions which apply to general rates. (Sect. 129.)

Upon the alteration of the assessment of premises the adjustment has the same retrospective effect as for general rates. (Sect. 131.)

#### *Part V. Prevention, Notification, and Treatment of Disease*

In cases of infectious diseases, owners may be required to state where articles have been sent to be washed or cleaned. (Sect. 152.)

Laboratories may be provided for the diagnosis and treatment of diseases. (Sect. 196.)

Ambulances (Sect. 197) and mortuaries (Sect. 198) may be provided.

Where a child is removed to a place of safety by a welfare authority they may meet the cost of maintenance. (Sect. 218.)

#### *Part VIII. Baths, Washhouses, Bathing Places, etc.*

Baths may be closed to the public for use by schools or clubs

or for entertainment purposes and charges made for such temporary use. Charges for admission may also be made in such cases. (Sect. 225.)

Power is given to local authorities to lay pipes and apparatus connected with baths. (Sect. 227.)

By-laws may be made with respect to baths and bathing pools under the management of a local authority. (Sect. 233.)

### *Part IX. Common Lodging-houses*

A definition of a "common lodging-house" is provided. (Sect. 235.)

The keeper of a common lodging-house is entitled to a written statement as to the grounds of a refusal of registration by a local authority. He has a right of appeal to a court of summary jurisdiction against the refusal to register. The keeper is entitled at any time to have an approved deputy registered in his stead. (Sects. 238 and 239.)

### *Part XI. Miscellaneous*

New and wide powers are granted for the local authority to control the use of movable dwellings. (Sect. 269.)

General power is given to local authorities to provide buildings and reasonable equipment also necessary vehicles and to enter into user agreements with other authorities. (Sect. 271.)

Committees may appoint sub-committees and co-opt outside persons thereof subject to a majority being members of the local authority. (Sect. 273.)

The conditions upon which streets may be broken open for the purpose of laying pipes for drainage purposes and supplying baths are assimilated to those in respect of water supply. (Sect. 279.)

Reinstatements of street works affecting certain properties of railways, docks and tramways must be carried out to the reasonable satisfaction of the company or undertakers. (Sects. 280 and 281.)

Documents purporting to be signed by the clerk of a council are to be accepted as evidence in legal proceedings. (Sect. 286.)

In recovering the cost of their expenses a local authority may make a charge, not exceeding 5 per cent of the cost of the works, in respect of establishment expenses. (Sect. 292.)

Agents and trustees for owners are limited in respect of owners' liabilities to the amount of the rents of the property or other moneys of the owner in their hands. (Sect. 294.)

A court may fix a reasonable period from which a daily penalty for a continuing offence may commence to run. (Sect. 297.)

Isolation hospital committees were dissolved from the 1st October, 1939, and their property and liabilities transferred to the county council or a joint board. (Sect. 315.)

New provisions are made relating to the transfer and compensation rights of officers. (Sect. 326.)

### *Application to London*

The Act of 1936 does not apply generally to London, but the following matters are made specially applicable—

Local authorities having jurisdiction in any part of the port health district of the port of London do not discharge any port health duties therein except by delegation by the port health authority. (Sect. 4.)

The former port sanitary district and port sanitary authority are now the port health district and the port health authority. (Sect. 5.)

The London County Council and the metropolitan borough council as sewerage authorities are authorized to agree with sewerage authorities outside London for intercommunication of their sewers. (Sect. 28.)

The regulations which the Minister of Health is authorized to make for the prevention and treatment of infectious diseases apply equally to London. (Sect. 143.)

The special provisions with respect to the treatment of tubercular seamen apply to London. (Sect. 175.)

Regulations prescribing certain qualifications necessary for officers dealing with the treatment of venereal diseases apply to London. (Sect. 180.)

The provisions for the regulation of canal boats apply to London. (Part X.)

General powers to provide premises and equip them with furniture and apparatus, to provide vehicles and enter into new agreements with other authorities in respect of these apply to London. (Sect. 271.)

The metropolitan authorities are empowered to borrow for any of these functions. (Sect. 342.)

Public health committees may, subject to any directions from the parent council, appoint sub-committees composed wholly or partly of members of the committee, providing a majority consist of council members, and delegate functions to such a sub-committee. (Sect. 273.)

They may execute works outside their areas subject to limitations with regard to sewerage and water supply. (Sect. 274.)

They may carry out work for and at the expense of owners and occupiers. (Sect. 275.)

They may sell materials removed when carrying out works and account to the owners. (Sect. 276.)

They have certain powers to require occupiers and agents to give information as to ownership of premises. (Sect. 277.)

Provisions with regard to the service of notices and entering premises apply to London. (Sects. 283-9.)

Also the provisions as to the recovery of expenses and charging of establishment expenses (Sects. 291-4), and prosecution of offences apply to London. (Sects. 296-303.)

Members and officers are protected from personal liability, (Sect. 305.)

The powers of the Minister of Health with regard to local inquiries and making regulations apply to London. (Sects. 318 and 319.)

(vi) **The Food and Drugs Act, 1938.** With their Third Interim Report the Local Government and Public Health Consolidation Committee issued a Draft Bill upon which this Act was based.

An important change is the alteration in the administering authorities. County and county borough councils remain the responsible authorities generally, but in county areas, non-county borough and urban district councils with a population not less than 40,000 become the local authorities for their areas and the Ministers may confer the functions on those with populations not less than 20,000.

(vii) **The Housing Act, 1936.** As the Housing Acts passed prior to that date had been consolidated in 1925 there was not a plethora of enactments left to consolidate in 1936. The whole of the consolidating Act of 1925 was repealed and nearly all the provisions of the 1930 and 1935 Acts. This left the code of Housing legislation as follows—

The Small Dwellings Acquisition Act, 1899.

The Housing, Town Planning etc., Act, 1909.

The Housing Act, 1914.

The Housing, Town Planning, etc., Act, 1919.

The Housing, etc., Act, 1923.

The Housing (Financial Provisions) Act, 1924.

The Housing (Revision of Contributions) Act, 1929.

The Housing Act, 1930.

The Housing (Rural Authorities) Act, 1931.

The Housing (Financial Provisions) Act, 1933.

The Housing Act, 1935, and

The Housing Act, 1936.

To these must now be added the following new Acts—

The Housing (Financial Provisions) Act, 1938, and

The Housing (Additional Provisions) Act, 1944.  
 The Housing (Temporary Accommodation) Act, 1944.  
 The Housing (Temporary Provisions) Act, 1944.  
 The Housing (Temporary Accommodation) Act, 1945.  
 The Building Materials and Housing Act, 1945.  
 The Housing (Financial and Miscellaneous Provisions) Act, 1946.

There was no new law incorporated in the Act of 1936 although Sects. 91 (1) (b) and 103 (4) (d) consist of modifications in the law made by the London County Council (General Powers) Act, 1928, with regard to guarantees to building societies and land suitable for development respectively. Certain provisions with regard to the powers of mental hospital boards are incorporated from the Mental Treatment Act, 1930.

(viii) **Public Health (London) Act, 1936.** Unlike its provincial partner, the London Act is pure consolidation. It wholly repeals and re-enacts the following legislation—

The Common Lodging Houses Acts, 1851 and 1853.  
 The Metropolis Management Amendment Act, 1885.  
 The Public Health (London) Act, 1891.  
 The Public Health (London) Act, Amendment Act, 1893.  
 The Cleansing of Persons Act, 1897.  
 The Children Act, 1908.  
 The Metropolitan Ambulances Act, 1909.  
 The Nursing Homes Registration Act, 1927.  
 The Rag Flock Act (1911) Amendment Act, 1928,  
 and except as far as they apply to the City of London,  
 The Baths and Washhouses Acts, 1846 to 1896.

Fourteen Acts are wholly repealed and sixty-eight others repealed in part. It is interesting to observe that the Act of 1851, now wholly repealed, was the first housing legislation passed in this country.

The lay-out of the Act is similar but not identical with the provincial Act. It consists of fourteen parts, namely—

#### Part I. Local Administration.

The County Council and the Sanitary Authorities.  
 The Port Health Authority.  
 Medical Officers of Health and Sanitary Inspectors.  
 Health Visitors.

#### Part II. Sewerage and Drainage.

Vesting of Sewers in County Council and Borough Councils.  
 General Functions of Borough Councils in Relation to  
 Sewerage and Drainage.

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General Functions of County Council in Relation to  
Sewerage.

Drainage of Premises.

Regulation of Construction of Sewers and Communications  
Therewith.

Protection of Sewers and Drains.

Miscellaneous Provisions.

### Part III. General Sanitation and Cleanliness.

General Provisions.

Water Supply.

Provisions as to Sanitary Conveniences, etc.

Animals and Birds.

Verminous Articles, Premises and Persons.

Factories, Workshops, and Bakehouses.

Underground Rooms.

Tents and Vans.

Rag Flock.

### Part IV. Offensive Trades.

### Part V. Smoke Consumption.

### Part VI. Tenements and Lodging-houses.

General Provisions.

Common Lodging-houses.

### Part VII. Public Baths and Wash-houses.

Provision of Public Baths and Wash-houses.

Management of Public Baths and Wash-houses.

Miscellaneous Provisions.

### Part VIII. Food.

General Provisions.

Milk.

Horse-flesh.

Ice Cream and Preserved Food.

Shell-fish.

### Part IX. Prevention and Treatment of Disease.

Notification of Diseases.

Prevention of Infectious Diseases.

Epidemic Diseases.

Treatment of Tuberculosis.

Removal of Diseased or Infirm Persons to Hospitals and  
Institutions.

Medical Officers and Health Visitors.

Part X. Hospitals, Medical Service, Ambulances and Mortuaries.

Provision of Hospital Accommodation and Medical Assistance by Local Authorities.

Recovery of Hospital Expenses.

Ambulance Service.

Mortuaries.

Part XI. Registration of Nursing Homes.

Part XII. Maternity and Child Welfare.

Part XIII. Child Life Protection.

Part XIV. Miscellaneous and General.

Incidental Powers of Sanitary Authorities and Port Health Authority.

By-laws.

Legal Proceedings.

Appeals.

Financial Provisions.

Remedies in Case of Default by Sanitary Authority.

Miscellaneous Provisions.

Supplementary Provisions.

Schedule I. Excepted Provisions.

Schedule II. Part I. Provisions of Metropolis Management Act, 1855, and Metropolis Management Amendment Act, 1867, applied for purposes of Part II of this Act.

Part II. Provision of Local Acts the Operation of which is Unaffected by Part II of this Act.

Schedule III. Making, Submission and Confirmation of Orders Authorizing Borough Councils to Acquire Land Compulsorily for the Purposes of Part IV of this Act.

Schedule IV. Charges for Use of Public Baths and Wash-houses.

Schedule V. Provisions for Securing the Abatement of Nuisances which may be Dealt with Summarily.

Schedule VI. Forms.

Schedule VII. Enactments Repealed.

If our local government system is to be continuously efficient it must be capable of development; and that not only by adaptation to new duties of increasing variety and magnitude, but by changing times and altered social conditions. There are several features to which special attention should be directed.

The Growing Democracy of Local Authorities. A revolution



in the form of local government started in the third decade of the nineteenth century, when representative bodies (the Boards of Guardians and the Town Councils) replaced authorities usually nominated, though the Guardians retained for several decades a nominated element in the *ex-officio* Justices, and the Town Councils have their Aldermen, chosen by the elected councillors.

This marked change and the subsequent developments followed on the doctrines of political liberty, which had come to a head in the last part of the eighteenth century, and were powerfully influenced by the changes wrought by the industrial revolution in ideas as well as material matters, instructively typified by Bentham and his school of utilitarians.

**Separation of the Administrative from the Judicial.** The establishment of representative bodies for local government for the first time draws a clear line between the judicial and the administrative. This is exemplified in the Local Government Act, 1888, though the distinction is not yet, or likely to be, all-embracing. In addition to the administrative functions which the Justices still directly exercise, such as licensing, they continue to play a considerable part in local government as an appellate body. Local administration is, however, strictly amenable to law in the sense that local authorities, and their officials, must administer according to the law and are liable to be restrained by the Courts if they contravene.

**Central Control.** To keep the local authorities in check, recourse could always be had to the Courts of Law. The Privy Council was the first branch of the central executive to exercise direct control. The Treasury, interested in financial control, also appeared early in the history of central control. For any detailed regulation we arrive at the appointment of the Poor Law Commissioners of 1834, to whom reference has already been made. They were abolished in favour of the Poor Law Board in 1848. This Board was composed of the chief executive officers of State, and thus gave the Board at least the appearance of Parliamentary responsibility. A General Board of Health was appointed in 1848 to supervise the work of the new Local Boards, and, at the same time, to take over the supervision of matters relating to local government from the Home Office and Privy Council. The Poor Law Board and General Board of Health were, in 1871, merged into the newly appointed Local Government Board, which took over the general control and supervision of almost all the local activities, and continued to do so until it became merged into the Ministry of Health in 1919.

**The Importance of Local Government.** In our time this is nowhere better evidenced than in the growth in the importance

of the Ministries connected with local affairs. A century ago foreign affairs were predominant in national affairs. Queen Victoria seldom, if ever, sent for a Poor Law Commissioner, but frequently had audience with the Foreign Secretary. To-day, public assistance, public health, housing and education rank equally with foreign and dominion affairs. Local Government legislation now occupies a large share in the time of Parliament.

The System of Local Government as we know it is barely fifty years old, and sixty years ago whatever local government existed in this country could more truly be described as a chaos than as a system. But even during the shorter of these two periods great social changes have taken place, which cannot be without their influence upon the constitution and the inter-relation of local government bodies. There has been, for example—

1. A continued and increasing growth of the urban at the expense of the rural population, as a consequence of which—

(a) Large towns have filled up their vacant spaces and overflowed their old limits.

(b) Centres of urban populations, formerly separate and independent, have grown into contact with each other and developed a common character.

2. A great development of new forms of rapid communication and transport, such as the telephone, the electric tramcar, the motor-car, omnibus, and the aeroplane, with the result that—

(a) The social and economic influence of an urban centre extends over a much larger area, and places hitherto separate tend to develop a common life.

(b) The effective range of administration of a single authority or a single officer is greatly increased.

(c) The growing inter-communication of districts formerly independent of each other gives rise to a demand for the unification or co-ordination of transport and other public services over a larger area, on grounds of efficiency, economy, and convenience.

3. The development of a much larger conception of the sphere of local government and of the functions to be performed by a local authority, which has led to—

(a) A great increase in the powers and duties of all urban authorities and County Councils, in the number and responsibilities of their officers, and in the amount of their expenditure.

(b) A demand for still wider powers, for greater independence of central control and for the transfer to local authorities of

some of the functions discharged by the Central Government; but also, on the other hand,

(c) A demand for a larger contribution by the Central Government to the cost of some services locally administered.

4. A gradual acceptance of new ideas concerning the mode of development of a town, the control and direction of its growth by the local authority, and the general standard of housing and comfort for the industrial and agricultural population.

## SOCIAL SECURITY

Of outstanding importance has been the establishment of the new system of Social Security. The Report on Social Insurance and Allied Services by Sir William Beveridge, 1942 (Cmd. 6404), was followed by White Papers in 1944 as follows—

Employment Policy: Cmd. 6527.

Social Insurance: Part I, Cmd. 6550.

Social Insurance: Part II, Cmd. 6551.

A National Health Service: Cmd. 6502.

These are considered in detail in a chapter entitled "National Insurance" in the Fourth Edition of *Social Administration* (Pitman).

Five important measures followed the publication of these Reports, viz.—

- (1) The Family Allowances Act, 1946.
- (2) The National Insurance (Industrial Injuries) Act, 1946.
- (3) The National Insurance Act, 1946.
- (4) The National Health Service Act, 1946.
- (5) The Poor Law Bill which will deal the *coup de grâce* to what remains of the Poor Law.

## CONCLUSION

The success and soundness of our system of local government is not to be ascribed to any considerable extent to legislative provisions nor to carefully prescribed statutory rules, regulations and orders issued by Ministers of State, nor to any meticulous control exercised by Central Departments over the actions of local bodies, although these may have played their part. Rather may such success which has been secured, and such soundness which has been established, be found in those priceless qualities of goodwill possessed by those who have willingly devoted their time, talents, and experience to the community; their readiness to co-operate in order to achieve desired objectives; and that traditional national characteristic which leads to compromise, in order to avoid the clash of opposing interests, which is the peculiar

genius of the race. In this connection, the comparative purity of our public life and the excellence of the services rendered by local government officials are also to be recognized as contributing very considerably to the same end.

In the pages which follow an attempt is made to impart a general knowledge of the working of local government authorities under the present system of local government.

## CHAPTER III

### REFORM IN LOCAL GOVERNMENT

LOCAL government in this country is firmly rooted in our traditions and forms part of the framework of our democracy. Since the limits of local government must be defined by Statute, and cannot have the flexibility of Common Law, it follows that, as conditions change, difficulties must arise which the old traditions are unable to meet; and development must be hampered by restrictions which, by the effluxion of time, have become obsolete. Thus it is that, at intervals of about forty years throughout the last century and a half, the organs of local administration were first examined by popular criticism, and then recast by Parliament. It requires apparently from forty to fifty years for the country to overtake and exhaust the provisions for local government which Parliament, from time to time, adds to the Statute Book. Within each interval the forces that make for radical reconstruction gather their strength.

The Reform Act of 1832 was followed by two Royal Commissions, one to inquire into the abuses of the poor law and the other into the administration of the boroughs. The former resulted in the passing of the Poor Law Amendment Act, 1834, which created the Boards of Guardians, and which is now incorporated in the Poor Law Act, 1930. The other resulted in the passing of the Municipal Corporations Act, 1835, which, with its various amendments, was consolidated in the Act of 1882. The repeal of the Test Acts by Wellington's administration, by removing the disabilities of dissenters, gave an impetus to the growth of the movement towards representative institutions. Under an Act of 1872 the whole country was divided into urban and rural sanitary districts, and Medical Officers of Health, appointed for these sanitary districts, were introduced. This was followed by the Public Health Act, 1875, which remained until 1936 the basic Act dealing with sanitary provisions. The passage of the Municipal Corporations Act, 1882, was followed by the establishment of the County Councils under the Local Government Act, 1888, and of the District and Parish Councils by the Local Government Act, 1894. During this period demands for the alteration of boundaries, or for the acquisition of powers beyond those obligatory duties which the general law imposed, were few and far between. In the early years of the twentieth century signs of a demand for change began to make their

appearance, influenced in no small measure by the Reports of the Royal Commission on the Poor Law and the Relief of Distress, 1909.<sup>1</sup>

### THE ROYAL COMMISSION ON LOCAL GOVERNMENT

For the last two decades the resistance which the County Councils offered to the extension of the boundaries of county boroughs into the county area and the consequent reduction in its rateable value has been one of the major facts of local administration. So acute, in fact, had the question become in 1923 that on 14th February of that year the Royal Commission on Local Government was appointed under the Chairmanship of Lord Onslow. Its terms of reference were: "To inquire as to the existing law and procedure relating to the extension of County Boroughs and the creation of new County Boroughs in England and Wales, and the effect of such extensions or creations on the administration of the Councils of Counties and of non-County Boroughs, Urban Districts, and Rural Districts; to investigate the relations between these several local authorities and generally to make recommendations as to their constitution, areas, and functions." These terms of reference were extended in August, 1926, so as to enable the Commission to make recommendations as to the constitution, areas, and functions of Parish Councils and of Parish Meetings.

The First Report<sup>2</sup> of the Commission appeared in August, 1925. The Commissioners submitted a full statement of the existing system of local government in England and Wales and made recommendations upon the first part of their terms of reference. The effect of this Report was to arrest, for the time being, the movement towards the dissolution of the county, but, as the Report of the Ministry of Health for 1925 attests, that parallel movement for the internal reconstruction of the elements within the county area continues with unabated force. Parishes, rural districts, and urban districts, confronted with the changes which affect the lives and occupations of their residents, were in a state of transition. No section of the First Report of the Royal Commission is of greater interest, therefore, than that which deals with "Local Government and Finance"—a section of about forty pages, which is of exceptional value. The Local Government (County Boroughs and Adjustments) Act, 1926 (now Local Government Act, 1933, Sect. 139) was the result of this Report.

The next stage in the scheme of reform was the passing of the

<sup>1</sup> See Chapter IV, *Public Assistance and Unemployment Assistance* (Pitman).

<sup>2</sup> Cmd. 2506, 1925. 9s. net.

Rating and Valuation Act, 1925. The general scheme of the Act is described in Chapter XXVIII.

Before the Rating and Valuation Act, 1925, could be brought fully into operation—such was possible only on 1st April, 1929—and before the Royal Commission on Local Government had completed its labours, the Chancellor of the Exchequer (the Right Hon. Winston Churchill), in his Budget Speech, 1928, outlined the rates relief scheme.

### THE RATES RELIEF SCHEME

In round figures the local authorities were collecting £150,000,000 from the ratepayers in the course of each year; the rates on productive industry, agriculture, railways, canals, docks, and harbours were approximately £34,000,000. It was proposed in the first place that agricultural land and farm buildings—other than the farmers' and labourers' residences—should be entirely free from rates after September, 1929. The Agricultural Rates Act, 1929, provided this relief as from 1st April, 1929, and the loss to local authorities was made good by a special Exchequer Grant under the Finance Act, 1929. Second, the rates to be borne by that part of every industrial and freight transport hereditament as defined by statute after September, 1929, should be charged on one-fourth of the net annual value. Third, in return for a grant of not less than £4,000,000 the railway companies should reduce their freights for the carriage of agricultural produce, coal, coke, patent fuel, mining timber, ironstone, iron and manganese ore, and limestone for blast furnaces and steel works. The charge on the Exchequer for these instalments of rates relief, combined with the allowance to the railway companies in compensation for lower freights and certain payments entailed by the revision of local government, was estimated to amount to £29,000,000 annually. That sum Mr. Churchill proposed to raise by diverting the 1927-28 surplus from debt reduction and by the appropriation of the surplus for 1928-29—an excess of revenue that was to be the product of the duty of 4d. per gallon on imported light hydro-carbon oils.

### THE RATING AND VALUATION (APPORTIONMENT) ACT, 1928

The scaling down of rates on the productive sections of each industrial undertaking was in line with the general exemption of process machinery inaugurated by the Rating and Valuation Act, 1925. For its legality there were passed the Rating and Valuation (Apportionment) Act, 1928, and the Local Government Act, 1929.

The properties receiving relief are "agricultural," "industrial,"

and "freight-transport" hereditaments. Agricultural hereditaments consist of agricultural land and agricultural buildings (other than farm houses and farm cottages). Industrial hereditaments are mines and mineral railways and, subject to certain exceptions, factories and workshops. Freight transport hereditaments are canals, docks, and railways used for the conveyance of public merchandise.

The first stage in carrying out the Government's scheme of rating reform was the imposition of the petrol tax, which is the chief source used to finance the scheme. The third stage was the Local Government Act, 1929, which authorizes the actual rating relief of the properties, and effects those changes in local government finance and administration which are rendered necessary by that relief. The intermediate stage was the classification and apportionment of value of the properties eligible for relief, and this, which was inaugurated by the passing of the Rating and Valuation (Apportionment) Act, 1928, was carried a stage farther by the subsequent issue of statutory rules, circulars, and memoranda by the Ministry of Health.

The general procedure laid down by the latter Act and the rules was that a special valuation list was to be drawn up by each rating authority, showing such particulars with regard to agricultural, industrial, and freight-transport properties as would be sufficient to distinguish these properties from other rateable properties, and to show the proportion of the values of the properties eligible for the special rating relief.

Agricultural properties—being already known because of their partial relief—were included in the special lists without any action on the part of the occupiers or owners, but in the case of the other properties affected, the making of a claim by the occupier was, and still is, a condition precedent to the derating of the property.

The relief does not apply to those portions of industrial premises occupied for non-industrial purposes, such as administrative offices, caretakers' houses, showrooms, or research laboratories, unless they form less than one-tenth of the remainder of the property and are within the curtilage.

Failure to claim in time meant omission from the preliminary list, and the only course open is the more elaborate procedure of formal objection or proposal for amendment before the assessment committee in respect of the list as deposited or as approved. In the case of proposals made subsequently to the 30th September, 1930, the loss falls on the local rates. Similarly, the rates benefit by premises ceasing to qualify for relief. Manifold complications arise from that reservation. The area of the works, mine, or shipyard in beneficial use for productive purposes by the employment



of manual labour is in course of continuous expansion or contraction. To vary the assessment as profits move would have been a matter of comparative ease, as the assessment of special properties has shown. A system of differential rating based on fluctuations in the demand for manual labour and the superficial space occupied by workmen is quite another affair. Necessarily, it must entail a large extension in the activities of rating authorities by the multiplication of their labours.

## THE SECOND REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT

In very considerable measure Mr. Churchill anticipated the Second Report of Lord Onslow's Royal Commission, which was published in October, 1928, and deals with the second part of the Terms of Reference.<sup>1</sup>

The Report stated that the need for a general review of areas of county districts and parishes had been established. County districts were constituted under the Local Government Act, 1894, Sect. 21 (3), and include every rural district, every urban district, and every non-county borough. The Report stated that: "The representatives of local authorities have not dissented from the view that there are at present authorities who cannot efficiently discharge the functions entrusted to them, and that a review of areas should be undertaken in order to see how far ineffective units can be eliminated by reorganization."

The Commission thought it desirable that every parish and every county district should be wholly within the area of one administrative county for all purposes. It should be competent for two or more County Councils to make a representation to the Minister of Health for an alteration of the county boundary, and the Minister should be empowered to make the necessary order after a local inquiry had been held.

The Commissioners recommended that County Councils should be empowered to contribute, at the expense of the ratepayers of the administrative county as a whole, to the cost of the provision of water supply and sewerage by councils of county districts, power being reserved to the Council of any county district to appeal to the Minister of Health against a proposal to make such a contribution.

Mr. Churchill in his Budget Speech promised a Bill, to be introduced by the Minister of Health in November, 1928, which should combine the smaller areas and also deal with the Poor Law. The system of percentage grants has been superseded to

<sup>1</sup> See Cmd. 3213, 1928. 1s. 6d. net.

some extent by a complex block grant subject to periodical revision. The new block grant system applies to the great majority of the health services, but not to certain other services, e.g. education, housing, or police.

The Local Government Act, 1929, Part IV, gave effect to many of the recommendations contained in the Second Report of the Royal Commission.

## GOVERNMENT'S PROPOSALS FOR REFORM IN LOCAL GOVERNMENT

The propositions which the Government brought forward involved certain important modifications in the administrative system, and in one respect—in regard to the Poor Law—departure from the method by which the distribution of public assistance had been controlled throughout a period of three hundred years. By the transfer of the duties of the Poor Law Authorities of 1834 to the councils of counties and county boroughs, a reform, long meditated, which the social legislation of the last twenty years had made inevitable, has been encompassed.

The official information on the Government's proposal for Local Government Reform was contained in the following papers—

*Proposals for Reform in Local Government* (White Paper Cmd. 3134, price 1s.).

*Local Government Bill, 1928, Explanatory Memorandum* (White Paper Cmd. 3220, price 6d.).

*Text of the Local Government Bill with Financial Memorandum attached* (Bill No. 3, price 3s.).

*Amendments to Part VI of the Bill proposed by the Minister of Health after discussion with local authorities* (White Paper Cmd. 3257, price 2d.).

*Local Government Act, 1929* (19 Geo. V, Ch. 17, price 2s.).

## LOCAL GOVERNMENT ACT, 1929

The salient features of the Local Government Act, 1929, were as follows—

1. Boards of Guardians were abolished as from 1st April, 1930, and their functions transferred to County and County Borough Councils.

2. Repeal of the Unemployed Workmen Act, 1905.

3. Registration of births, deaths, and marriages transferred to County and County Borough Councils, as a service separate from poor law administration. Provision was made for registrars to become salaried officers.

4. Provisions with reference to the future administration of

highways and the relative positions of County, Borough, Urban District, and Rural District Councils in that connection.

5. Alterations in Local Government areas and in certain functions relating thereto.

6. Machinery for the complicated transfers of property, liabilities and officers from the old to the new authorities.

7. A revolution in the financial relationship between the National Exchequer and local authorities, certain financial contributions being in future based upon an abstruse formula.

The Act is in eight parts and contains 138 sections together with 12 schedules, and its title is "An Act to amend the law relating to the administration of poor relief, registration of births, deaths, and marriages, highways, town planning and local government; to extend the application of the Rating and Valuation (Apportionment) Act, 1928, to hereditaments in which no persons are employed; to grant complete or partial relief from rates in the case of hereditaments to which that Act applies; to discontinue certain grants from the Exchequer and provide other grants in lieu thereof; and for purposes consequential on the matters aforesaid."

Broadly speaking, the Act has for its objects (a) the widening of the area of administration of certain services to that of the county and county borough; (b) the co-ordination of public social services; (c) the granting of greater freedom to local authorities from central control.

The respective Parts are as follows—

- Part I. Poor Law (now Poor Law Act, 1930).
- Part II. Registration of Births, Deaths, and Marriages.
- Part III. Roads and Town Planning.
- Part IV. Miscellaneous Local Government Provisions.
- Part V. Rating and Valuation.
- Part VI. Exchequer Grants and other Financial Provisions.
- Part VII. Property, Liabilities, and Officers.
- Part VIII. General.

These Parts are treated in the appropriate chapters which follow, with the exception of Parts IV and VIII, which may be dealt with most suitably at this point. Many of these provisions are now incorporated in the Local Government Act, 1933, and the Public Health Act, 1936.

#### PART IV. MISCELLANEOUS LOCAL GOVERNMENT PROVISIONS

Part IV of the Act is mainly based on the recommendations contained in the Second Report of the Royal Commission on

Local Government. The inequalities and injustices which the Local Government Act, 1929, was framed to redress were occasioned in part, at least, by the inelasticity of the then existing system of boundaries and the absence of any adequate machinery for altering them to meet changing conditions. Accordingly, the Act provided machinery for the easy readjustment of local boundaries both between districts and electoral areas. These provisions were incorporated in the Local Government Act, 1933, but have been largely superseded by the Local Government (Boundary Commission) Act, 1945.

## REVIEW OF DISTRICTS

Sect. 46 required the County Council to carry out a survey of the county, and make proposals for alterations of boundaries of districts, and of non-county boroughs and county boroughs if the borough councils agree. The proposals in connection with any of the points above-mentioned had to be submitted to the Ministry of Health before the 1st April, 1932. The other authorities in the county had to be consulted, and the councils of the county boroughs adjoining the county had the right to submit their views to the Minister on the County Council's proposals. If any objection was made by a local authority, the proposals could be confirmed only after a local inquiry.

This section was intended to give effect to the express intention of the original Local Government Act, 1888, for equality of representation from the different areas.

Provision is further made for various minor alterations in local government law; for instance, the acceleration of the process under which Medical Officers of Health become full-time servants of the local authorities, and the making of regulations prescribing the qualifications of such officers and of health visitors. Provision was made for a survey to be made by the County Councils of the existing accommodation of hospitals for infectious diseases, and the preparation of a scheme, where necessary, for the provision of adequate accommodation.

## PART VIII. GENERAL

Part VIII dealt with expenses and borrowing, Ministry of Health inquiries, orders as to schemes and regulations, transitory provisions, and definitions.

## SCHEDULES

Certain Schedules to the Act set out the discontinued grants, adjustment of certain payments, rules for the calculation of General Exchequer Grants, rules for ascertaining gains and losses

of areas, provisions as to the sale, etc., of parish property, and provisions for securing allowance of rebates to selected traffics corresponding to rate-relief of certain companies, and enactments repealed.

### THE THIRD AND FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT

The Royal Commission on Local Government issued its Third and Final Report in December, 1929.

This Report is divided into three parts as follows—

#### Part I. Functions of Local Authorities.

(a) Distribution of Certain Functions between Local Authorities.

(b) Other Questions affecting Powers and Duties of Local Authorities.

#### Part II. Matters Relating to the Constitution of Local Authorities.

#### Part III. Local Government Officers.

The most important matters dealt with will be considered in the appropriate chapters which follow, but the subjects which are not referred to in the succeeding chapters are mentioned below.

### PART I. FUNCTIONS OF LOCAL GOVERNMENT AUTHORITIES

**Co-operation Between Local Authorities.** Attention is drawn to the importance of developing co-operation between Local Authorities, particularly in regard to services which, without any reassignment of statutory responsibility, can often be provided most efficiently by action between two or more Authorities.

**Establishment of Insurance Funds by Local Authorities.** It was suggested that a special inquiry should be made into the question of whether or not the establishment of insurance funds by Local Authorities should be authorized, in order that all aspects of the question might be fully investigated before joint and general legislation is proposed. Certain authorities have this power under local Acts.

### PART II. MATTERS RELATING TO THE CONSTITUTION OF LOCAL AUTHORITIES

**Consolidation of Statutes.** The opinion was expressed that the consolidation of the Statutes relating to local government and public health was urgently needed in the interests both of local government and of central administration.

The Local Government Act, 1933, the Public Health Act, 1936,

and the Food and Drugs Act, 1938 (See Chapter XII: Public Health) have resulted from this recommendation. The Local Government (Boundary Commission) Act, 1945, is dealt with in Chapter I.

**Disqualification of Members of Local Authorities.** The Commissioners' suggestions were as follows—

(i) The law relating to disqualification of a member of a Local Authority by reason of having an interest in any contract with the Council requires amendment to meet conditions now prevailing. The general principles of any such amendment of the law should be (a) to make it uniform for all classes of Authorities and Committees thereof; (b) to bring it up to date so as to suit modern conditions; (c) to make it clear, so far as it is possible to define the disqualifications without making the code so exclusive as to debar any substantial part of the population from taking part in local government.

(ii) The disqualification should apply to voting rather than to membership, and the provisions of Sect. 22 of the Municipal Corporations Act, 1882, that "a member of the Council shall not vote or take part in the discussion of any matter before the Council, or a Committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest," which then applied to Municipal Corporations and County Councils, should be extended to cover, without exception, shareholders, directors, and employees of companies with which the Local Authority may contract; and should be applied to members of all classes of Local Authorities.

(iii) Any disqualifications applicable to elected members should apply also to co-opted members.

Statutory effect has been given to these recommendations in the Local Government Act, 1933. (Sect. 123.)

(iv) As regards medical practitioners, a doctor who is remunerated by fees for special services rendered under certain Acts need not be disqualified for membership of a Local Authority. On the other hand, a doctor who is rendering not necessarily continuous but continuing service in a specific capacity, such as a medical officer at a maternity and child welfare centre, is more clearly in a contractual relation, and should therefore be disqualified from membership.

**Number of Committees of Local Authorities.** The Commissioners draw attention to the evidence tendered in regard to the multiplication of committees by local authorities. The Commissioners make no recommendation on the matter, as the appointment of committees is within the discretion of the local authority, except in cases governed by statutory requirement.

The subject has been dealt with by the Local Government Act, 1933, Sect. 85 (1) and (2).

**Co-option on Committees of Local Authorities.** The Commissioners agree with the view of the Associations of Local Authorities that the number of co-opted members on Committees of Local Authorities should not exceed one-third of the total number of the Committee.

This provision has been incorporated generally in the Local Government Act, 1933, Sect. 85 (3).

### PART III. LOCAL GOVERNMENT OFFICERS

The conclusions of the Commissioners were as follows—

(i) **Recruitment.** It is open to question whether the present methods of recruitment of Local Government Officers are calculated to ensure that Local Authorities shall have at their disposal officers of the type needed to assist them in the discharge of the increasing responsibilities which Parliament is year by year laying upon them. The problems which had emerged from the Commissioners' investigation required a much more detailed investigation than had been possible by them, and that a Departmental Committee should be appointed to inquire into the recruitment of Local Government Officers. The Hadow Committee issued its Report and, as is stated on page 25, this recommendation was adopted.

(ii) **Promotion and Transfer.** Connected with the question of recruitment is that of promotion and transfer. Officers, especially when in the employment of the County Councils and the large municipalities, can generally rely on a reasonable scope for securing promotion even in the service of a single authority, but the advantages both of promotion and of transfer from the service of one authority to that of another are secured when vacant appointments are thrown open to general competition. The facilities for transfer might with advantage be enlarged, and the general adoption of superannuation will contribute materially to such a result. Local authorities will, however, resent any suggestion of depriving them of the privilege of appointing their own officers.

(iii) **Office Organization and Position of Clerk to the Local Authorities.** (a) As regards office organization and the promotion of co-ordination between the various departments, the weight of evidence was overwhelmingly in favour of the Clerk to the Council being recognized as the principal officer of the local authority charged with responsibility for securing the essential administrative result indicated. In supporting this view, the Commissioners placed on record their inability to believe that

the administrative machinery of local government could be worked on any other basis.

(b) Generally speaking, the balance of convenience pointed to the selection of a clerk with legal qualifications, but it would be regrettable if such a requirement were universally maintained to the exclusion of candidates who might bring into the service of an authority administrative abilities of a high order. See Report of the Hadow Committee on page 25 *ante*.



## CHAPTER IV

### CENTRAL DEPARTMENTS OF THE STATE

It has already been explained that the work of a local authority is, in general, limited to the duties assigned to it by Parliament. The supervision of the administration is in the hands of certain Departments of the State.

The principal Central Departments of the State concerned in the administration of Local Government are dealt with below.

### TREASURY

The office of Lord High Treasurer has been "in commission," with certain intervals, since 1612. Since the days of George I the powers and duties of the office of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland have invariably been executed by Commissioners, consisting of the First Lord of the Treasury, the Chancellor of the Exchequer, and five Lords Commissioners, who are usually designated Junior Lords, with a Parliamentary Secretary (Chief Whip) and a Financial Secretary.

The First Lord, if he holds that office only, has no share in the management of the Department, but some minor duties, such as recommending for Civil List Pensions, appertain to his position. A number of appointments are in his gift, and he is *ex-officio* trustee of the National Gallery and of the British Museum. For nearly 80 years, prior to 1885, the office of First Lord of the Treasury was invariably held by the Prime Minister of the day and is usually so held to-day. The Commissioners forming the Treasury Board seldom, if ever, meet; and in fact the real work of the Department is performed by the Chancellor of the Exchequer, who is its effective head, aided in matters of detail by the Financial Secretary and the Permanent Secretary. The Chancellor of the Exchequer sees that the estimates sent in by the spending departments are framed with due regard to economy. He is made acquainted with the views of the Revenue Departments regarding probable receipts, and upon the figures before him he prepares and opens his Budget. Appointments in the National Debt Office are in his gift, and not only questions affecting public revenue and expenditure but the National Debt and the best methods of reducing it, and the advances made by the National Debt Commissioners for local loans, are all matters within his special cognizance.

The Chancellor of the Exchequer is also Under Treasurer, Master of the Mint, and Principal Commissioner for the Reduction of the National Debt. He also presides in the High Court of Justice at the nomination of Sheriffs. Like the First Lord of the

Treasury, he is provided with an official residence at Downing Street. The departmental duties of the five Junior Lords of the Treasury are almost nominal. The Patronage Secretary to the Treasury is principal Government Whip, but he does little more than nominate to a few appointments.

The Lord High Treasurer, who, when in office, is the third Great Officer of State, formerly had the appointment of all officers employed in collecting the revenues of the Crown. He also nominated all escheators, in cases where estates reverted to the Crown by reason of forfeiture or failure of heirs, and was responsible for the disposal of all plans and ways relating to the revenue, and the power to grant leases of Crown lands.

This definition of his powers and duties still holds good, to a great extent, in regard to the Treasury Board, although the management of the Crown lands has passed to the Ministry of Works and Forestry Commission. The Treasury is the highest Financial Department of the State. Few people appreciate how wide and important is the control which the Treasury actually exercises in connection with Government administration. It has control over the management, collection, and expenditure of the public revenue, and exercises a general supervision and control over all the public departments; no increase of salaries, or additions to, or material changes in, the civil establishments can be made without its authority. All exceptional cases in matters of revenue are referred to the Treasury, and it settles all questions regarding the amount of compensations, allowances, and pensions to be awarded in exceptional cases. The Treasury audits the Civil List, and is the accounting department to the House of Commons for a number of civil service votes, including those for contributions in lieu of rates on Government property, secret service, criminal prosecutions, learned societies, subsidies, and temporary commissions. The Treasury sanctions loans granted by the Public Works Loan Board.

The Treasury is divided into two Departments: (1) Finance and Supply Services, and (2) Establishments, over each of which there is a Controller who holds the thread of all general questions relating to his department, and directs the activities of the lesser units, the Divisions.

During the war and post war periods the Treasury has maintained *inter alia* Ministry of Food Branch, Ministry of Pensions Branch, Ministry of Supply Branch and War Damage Commission Branch. In connection with the Treasury there is a Parliamentary Counsel who drafts Government Bills. A solicitor or barrister is also appointed Procurator-General and Solicitor to the Treasury, and is generally known as the King's Proctor. He is the Crown's

nominee when His Majesty becomes entitled to the personal estate of an intestate and administration is granted by the High Court. He is also the King's Proctor for Divorce Interventions.

The Treasury formerly administered the Local Taxation Account, which was wound up in accordance with the provisions of the Local Government Act, 1929, Sect. 85. This account was formed to receive the proceeds of the assigned revenues earmarked for the aid of certain local government services assisted by direct grants prior to 1888, and other grants subsequently made. The amounts paid through this account are now included in the new General Exchequer Block Grant, with the exception of the moiety of the salaries of Medical Officers of Health and sanitary inspectors, provision being made for the continuance of those payments by County and County Borough Councils, and the former half pay and clothing of police grant and the Custom and Excise duties earmarked for education which have been merged in the service grants for police and education.

**Public Works Loan Board.** The Public Works Loan Board is under the control of the Treasury. It was created in 1817 for the purpose of advancing money, subject to the approval of the Treasury, to municipal authorities for public works, e.g. housing schemes. Money for loans is raised by the Treasury issue of Local Loans Stock, supplemented by loans out of the Consolidated Loans Fund for land settlement advances and half proceeds of National Savings Certificates. The proceeds are paid into the Local Loans Fund and thence to the borrowing authorities. Advances were previously limited to authorities having a rateable value not exceeding £200,000, except in the case of National Savings loans, small holdings, land settlement, and advances were also made to local authorities for the purpose of the Small Dwellings Acquisition Act, 1899, and the Housing Act, 1936. As part of the post-war borrowing policy of the Government the Local Authorities Loans Act, 1945, was passed to require all local authorities to obtain their loans through the Board until the end of 1950. Loans are repaid, usually on the annuity system of principal and interest, over periods varying from 20 to 80 years. The rate of interest is fixed by Treasury Minute. The Board also makes loans to "public utility societies" and to individual landowners for permanent improvements to estates.

The Board makes to the Treasury an annual report, which report is presented to Parliament.

**Development Commission.** The Development Commission was established by the Development and Road Improvement Funds Acts, 1909 and 1910, to advise the Treasury in the

administration of a national fund for the development of agriculture, fisheries, and other analogous economic resources of the United Kingdom.

## PRIVY COUNCIL

His Majesty's Most Honourable Privy Council numbers at the present time over 300 members. It is composed of persons eminent in every walk of life. Certain members of the Royal House are *introduced* into the Council. The Archbishops of Canterbury and York, the Bishop of London, and the Speaker of the House of Commons are, by virtue of their respective offices, sworn of the Council, likewise all Cabinet Ministers on first assuming office; also certain holders of high judicial office, viz., the Lords of Appeals, the Lords Justices of Appeal, the Master of the Rolls, the Lord Chief Justice of England, and certain Judges from India and the Dominions who assist in the Judicial Committee of the Council. His Majesty's Ambassadors to Foreign Courts, the Governors-General of India and of the various Dominions, and many leading Colonial and Indian statesmen are included on the Roll. The following Great Officers of State, viz., the Lord Steward of the Household, the Lord Chamberlain of the Household, and the Master of the Horse, are, together with certain other members of His Majesty's Household, sworn of the Council.

At meetings of the Privy Council when the King is present, three Privy Councillors form a quorum, but, as a matter of fact, never less than four Councillors are summoned to attend. These are drawn from the Members of the Government of the day, the Great Officers of State, and other Members of His Majesty's Household, and Members of either House of Parliament in political sympathy with the Government.

The only occasions on which the Privy Council is summoned as a whole is on the demise of the Crown, and when the Sovereign announces his intention to marry.

The Privy Council has many functions, both executive and ministerial, including the granting of Charters of Incorporation, the fixing of dates for the operation of new statutes, when so provided by the Act of Parliament, and the transfer of departmental powers. The tendency of modern legislation to supplement its provisions by Order in Council is largely responsible for the great increase in the number of Orders issued.

A petition of a District Council presented to the King for a Charter of Incorporation as a borough stands referred to a Committee of the Privy Council (Local Government Act, 1933, Sect. 130).

The Judicial Committee of the Privy Council is the final Court of Appeal from India, the Dominions and Colonies, and also in Ecclesiastical Causes.

There are a number of Committees constituted to deal with particular functions, e.g. the Board of Trade, and until 1944 the Board of Education. In 1915 there was established a Committee for the Organization and Development of Scientific and Industrial Research. This is known as *The Department of Scientific and Industrial Research*, which has a Head Office and an Advisory Council. There have been constituted various centres dealing with Building Research, Chemical Research, Food Investigation, Forest Products Research, Fuel Research, Radio Research, Water Pollution Research, and the British Museum Laboratory, while the National Physical Laboratory at Teddington is also under this Department.

### BOARD OF TRADE

The Board of Trade means "The Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations." It is an executive Committee of the Privy Council, and consists of a President, who is a Member of Parliament, and the following *ex-officio* members: His Majesty's Principal Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, the Speaker of the House of Commons, and the Archbishop of Canterbury. The Board never meets, but periodical meetings take place between the President and the heads of the various departments. In September, 1919, the President established an internal Administrative Council, which includes the Parliamentary and Permanent Secretaries and the heads of the chief administrative departments.

The duties of the Board of Trade are to encourage and supervise the trade and industry of this country, and also to enforce certain statutes relating to trade. The Board is organized in two main divisions, viz., (1) the Department of Commerce and Industry, and (2) the Department of Public Service Administration.

1. **Department of Commerce and Industry** is concerned mainly with the development of trade, with vigilance, with suggestions, with information, and with the duty of assisting national commerce and devising and assisting the policy of national industry.

This Department is divided into the following divisions—

1. **COMMERCIAL RELATIONS AND TREATIES DEPARTMENT** deals with export licences.

2. **MINES DEPARTMENT** (including the Petroleum Section) is now incorporated in the Ministry of Fuel and Power.

3. DEPARTMENT OF OVERSEAS TRADE (DEVELOPMENT AND INTELLIGENCE) which is a joint Department of the Board of Trade and Foreign Office.

4. INDUSTRIES AND MANUFACTURES DEPARTMENT (including Standards of weights and measures), deals with import licences.

5. GENERAL DEPARTMENT deals with Merchandise Marks and Food, which latter in time of war becomes the Ministry of Food.

6. PATENT OFFICE AND INDUSTRIAL PROPERTY DEPARTMENT.

7. STATISTICS DEPARTMENT, which includes two important branches, viz., (a) the Census of Production Office; and (b) the Industrial Inquiries Office.

8. INTELLIGENCE AND PARLIAMENTARY DEPARTMENT (including LIBRARY).

2. Department of Public Service Administration is primarily engaged in statutory and other administrative functions of a permanent nature with regard to trade and transport entrusted to the Board of Trade. The divisions of this Department are—

1. MERCANTILE MARINE DEPARTMENT is now incorporated in the Ministry of War Transport.

2. INSURANCE AND COMPANIES DEPARTMENT.

3. COMPANIES (WINDING-UP) DEPARTMENT.

4. BANKRUPTCY DEPARTMENT.

5. BANKRUPTCY (HIGH COURT) DEPARTMENT.

There are, in addition, three general departments—THE SOLICITOR'S DEPARTMENT, THE FINANCE DEPARTMENT, AND THE ESTABLISHMENT DEPARTMENT—which are really internal departments and have little to do with the functions of the Board. The *Board of Trade Journal*, the official publication of the Board, was first published in July 1886, and is now the medium of announcement for the Board of Trade and the Department of Overseas Trade.

The Food Council is attached to the Board of Trade in times of peace.

## MINISTRY OF EDUCATION

By the Board of Education Act, 1899, the Education Department and the Department of Science and Art were merged into the Board of Education. The official designation of the Board was "the Lords of the Committee for the time being of the Privy Council appointed for education." Certain educational functions of the Charity Commissioners and of the Board of Agriculture (now Ministry of Agriculture and Fisheries) were also transferred to the Board of Education. The Education Act, 1944, created a Minister of Education and the title of the Board was changed to the Ministry of Education.

The executive work is in the hands of the Minister and the Secretariat. The latter includes a Parliamentary Secretary, a Permanent Secretary, a Deputy Secretary, a Permanent Secretary (Welsh Department), Principal Assistant Secretary (Primary Schools), Principal Assistant Secretary (Secondary Schools), and a Chief Medical Officer, who is also Chief Medical Officer of the Ministry of Health. There is also a principal assistant secretary for further education including technical and continuation schools, etc. Principals have been since 1926 in charge of territorial divisions, and are assisted by assistant principals. The Ministry has a very extensive staff of inspectors, who are grouped into divisions connected with primary schools, secondary schools, etc.

These are responsible for the provision and inspection of all schools, including the control of endowments; also, the Victoria and Albert Museum, the Science Museum, and the Royal College of Art at South Kensington.

There are also Inspectors for Wales.

The bulk of the work of the Ministry is carried on in the Territorial Divisions. There are also the following branches, viz.—

- (1) Finance Branch is under an Accountant-General.
- (2) Legal Branch possesses a Legal Adviser, with assistant legal advisers and several legal assistants.
- (3) Pension Awards Branch.
- (4) Medical Branch was established under the Education (Administrative Provisions) Act, 1907, and is under the control of the Chief Medical Officer, who is also the Chief Medical Officer in the Ministry of Health, assisted by an administrative and medical staff.
- (5) Library, under a Librarian.
- (6) Architects' Office, for the purpose of approving the plans of schools and other educational institutions in accordance with the Regulations of the Ministry.
- (7) Directorate of Physical Education.
- (8) Teachers Training Colleges, etc.
- (9) Establishment Branch, under the Director of Establishments.
- (10) Welsh Department, controlled by a Permanent Secretary, to administer the Acts in relation to Wales and the Welsh Intermediate Education Act, 1889.

**Advisory Councils.** The former Consultative Committee has been displaced by two Advisory Councils, one for England and one for Wales. Unlike the Consultative Committee which they replace, their activities are not confined merely to matters referred to them.

**Committees.** The "Burnham" Committees (Primary, Secondary, and Technical) deal with salaries. During recent years the Department has kept in touch with the views of teachers with regard to much of the work by consulting the Teachers Registration Council, which was constituted by Order in Council, 29th February, 1912. In particular matters it has also relations: (a) For primary education with the National Union of Teachers; (b) for secondary education with the Joint Committee of the Four Secondary Schools Associations; and (c) for technical and art education with the Joint Committee of the Three Technical and Art Associations.

**Accounts.** The accounts of local education authorities are audited by the District Auditor of the Ministry of Health, and not by the Ministry of Education.

If a draft scheme or order for altering the area or functions of a local authority affects any local education authority it must be referred for consideration to the Minister. (Local Government Act, 1933, Sect. 133.)

## HOME OFFICE

The Home Secretary is one of His Majesty's principal Secretaries of State of whom there are eight, viz., the Home Secretary, the Secretary of State for Foreign Affairs, the Secretary for War, the Secretary for the Colonies, the Secretary for India, the Secretary for Air, the Secretary for the Dominions, and the Secretary for Scotland. Legally they all share the same office, and can each (except where otherwise provided by statute) perform the duties of the others. The division of functions between them is merely a matter of arrangement. One must always be present in the Metropolis. All of them have seats in the Cabinet.

The principal secretary is the Home Secretary. He is entrusted with all the work of the secretariat which has not been especially assigned to the remaining Secretaries of State or to the other administrative departments.

The principal duties of the Home Secretary include—

1. *Relations with the Sovereign.* The duties of the Home Secretary bring him into more immediate and personal relations with the Crown than do those of his colleagues. He receives addresses and petitions which are addressed to the King in person, as distinct from the King in Council, and he arranges for their reception and answers. Whenever the King's pleasure is to be communicated to an individual or a department, unless the matter is specially appropriate to one of the other Secretaries of State, the Home Secretary is the proper medium of communication.

2. *Exercise of Pardon.* The Home Secretary advises the King



in the exercise of the prerogative of mercy, which is a discretionary power to remit or modify punishment for a public offence and must not interfere with private rights. In every case of reprieve, commutation, or pardon, a Royal Warrant is necessary. The pardon granted may be absolute or conditional, while the reprieve may be from a death sentence to one of penal servitude for life or detention during His Majesty's pleasure.

3. *Maintenance of the King's Peace.* The Home Secretary is responsible for the preservation of the King's Peace. Except in the case of the county of Lancaster, where the Chancellor of the Duchy appoints, he and the Lord Chancellor are responsible for the appointment of Justices of the Peace. He recommends the appointment of Stipendiary Magistrates and Recorders.

He exercises a considerable amount of control over the local police force. He sanctions the appointment of Chief Constables, and any change in the strength or pay of the force. Inspectors of Constabulary are appointed, and a Police Grant is made of half the net approved expenditure. This gives the Home Secretary power to prescribe the organization, equipment, and discipline of the local force all over England and Wales. The Metropolitan Police Force is completely under his control. In order to preserve the peace, the Home Secretary has the power to call on the military in case of necessity.

The Police (Appeals) Act, 1927, provides for a right of appeal to a Secretary of State by members of police forces who are dismissed or required to resign. This has since been extended to appeals against lowering of the rank of members of forces.

*The Metropolitan Police Act, 1933,* increased the number of Assistant Commissioners of the Metropolitan Police, altered the ages of compulsory retirement to some of the higher ranks in the Force, broadened the basis of recruitment for these ranks, and instituted a short service class of constables.

4. *Administration of Justice.* The Home Secretary advises the Crown as to the frequency with which the assizes should be held. He settles the fees to be taken by the Clerks to the Justices; he fixes the salary to be paid to the Clerks of the Peace in place of fees, and also fixes the table of fees to be paid to prosecutors and witnesses. In addition he appoints the Public Prosecutor and his staff.

5. *Control of Persons.* The Home Secretary has to deal with various classes of persons. He has control of immigration and the supervision of aliens through the Immigration Branch. By the Naturalization of Aliens Act, 1914, with or without assigning any reason, he may give or withhold a certificate, whichever he thinks

most conducive to the public good. He controls the administration of the laws relating to inebriates. Certain by-laws, e.g. those relating to good rule and government, passed by County and Borough Councils, must be submitted to him for approval.

6. *Safeguarding the Public.* The Home Secretary is responsible for the safety and welfare of the subject, and thus enforces the Acts relating to burial grounds (including the granting of licences for the removal of remains), anatomy, vivisection, explosives, dangerous drugs, and Fire Service Department.

7. *Registration and Elections.* By the Ministry of Health (Registration and Elections, Transfer of Powers) Order, June, 1921, powers and duties exercised and performed, under the Representation of the People Acts, by the Ministry of Health as successor to the Local Government Board were transferred to the Secretary of State. The Home Secretary may prescribe forms of nomination and declarations of acceptance of office by chairmen of County Councils, mayors, aldermen, and councillors. He arranges for holding inquiries into representations for the alteration of electoral divisions or petitions for alteration of borough wards and the alteration of the number of councillors therefor. He issues rules for holding elections for district and parish councillors and for polls of a parish meeting. A copy of every order made by a County Council under Part I of the Local Government Act, 1933, must be sent to him.

8. *Administration of Industrial Laws.* The Home Secretary was responsible for the administration of the extensive code of industrial laws, including the supervision of the operation of the Factories Acts, Shops Act, 1934, and the control of quarries. In 1940, the functions were transferred to the Ministry of Labour and National Service for the period of the present emergency. There is an Industrial Museum at 97 Horseferry Road, Westminster, as a permanent exhibition of methods, arrangements and appliances for promoting safety, health, and welfare of industrial workers.

9. *Inspection of Institutions.* Various institutions over which the State has certain powers of control are under his jurisdiction, such as prisons and gaols (direct), industrial and reformatory (now approved) schools (inspection only).

10. *Children's Branch.* Deals with Approved Schools and includes Inspectors of Probation and other matters in connection with juvenile delinquency.

There are also inspectors under the Prevention of Cruelty to Animals Acts.

11. *Relations with Foreign Powers.* The Home Secretary ensures the observance of the Acts conferring privileges upon foreign Ambassadors and their servants, and thus preserves amicable

relations with the subjects of foreign powers. He administers extraterritorial laws in regard to persons who have committed crimes in foreign countries, and have taken refuge upon our shores.

**The Ministry of Home Security.** This was set up under the Ministers of the Crown (Emergency Appointments) Act, 1939, to co-ordinate the work of Civil Defence, including Air Raid Precautions.

*Air Raid Precautions.* The Home Office set up a special Air Raids Precautions Department. These provisions were allowed to lapse in 1945.

The subject is dealt with at greater length in Chapter XVII.

II. *Territorial Functions.* Outlying places such as the Channel Islands and the Isle of Man, which are not, from an administrative point of view, a part of the United Kingdom, and yet are not colonies, fall under his jurisdiction. He is responsible to Parliament for the administration of Northern Ireland.

The Home Secretary is assisted by a Parliamentary Under-Secretary and a staff of permanent officials, including a Permanent Under-Secretary, a Prison Commission, a Metropolitan Police Commission, and a number of inspectors for various purposes.

Although responsible for public order, the Home Secretary is by no means a Minister of the Interior in the Continental sense, for, apart from the police, he has very little to do with local government, the supervision of which, although in part spread over different departments, is mainly concentrated in the hands of the Ministry of Health. On the other hand, he has some of the functions of a Minister of Justice.

## MINISTRY OF HEALTH

The Poor Law Amendment Act, 1834, created a central body of Commissioners which became permanent in 1848 under the title of the Poor Law Board.

The Public Health Act, 1848, created a General Board of Health, whose members were appointed by the Crown. It had powers to appoint inspectors and to see that the Act was carried out. It was allowed to expire; and in 1858 its functions were transferred to the Home Office and the Privy Council.

The Royal Sanitary Commission, 1868, strongly deprecated the existing inefficiency and uncertainty of the central sanitary authority and urged the necessity of a new statute to "constitute and give adequate strength to one central authority." In 1871 the Local Government Board was formed as a result of the Commission's Report. Its work, which was transferred to the

Ministry of Health on 1st July, 1919, included control of the Poor Laws, the Old Age Pensions Acts, and sanitary legislation.

The object of the Ministry of Health Act, 1919, was to consolidate in one Department, and under one Minister—

(a) All the powers and duties of the Local Government Board;  
(b) All the powers and duties of the Insurance Commissioners and the Welsh Insurance Commissioners;

(c) All the powers of the Board of Education with respect to attending to the health of expectant and nursing mothers, and of children who have not attained the age of five years and are not in attendance at schools recognized by the Board of Education; the medical inspection and treatment of children and young persons;

(d) All the powers of the Privy Council and the Lord President of the Council under the Midwives Acts, 1902 to that date;

(e) Such powers of supervising the administration of Part I of the Children Act, 1908 (which relates to infant life protection), as had heretofore been exercised by the Secretary of State.

(f) The Act also contains powers to bring, on a date to be determined, under the control of the Department—

(i) The care of sick soldiers (now undertaken by the Ministry of Pensions); and

(ii) The control of lunacy administration.

The latter was effected by the transfer of the Board of Control from the Home Office in May, 1920. By Orders in Council, dated 9th November, 1920, provision was made (i) for the transfer of certain powers relating to gas supply from the Ministry of Health to the Board of Trade, and (ii) for the transfer from the Board of Trade to the Ministry of Health of all the powers and duties under the Gas and Water Works Facilities Act, 1870, and the amending Act of 1873, in relation to water undertakings in England and Wales.

(g) The Act also empowers His Majesty by Order in Council to transfer from the Ministry of Health to any other Government Department any of the powers and duties of the Minister which appear to His Majesty not to relate to matters affecting or incidental to the health of the people. In pursuance of that provision, an Order in Council was made, entitled the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921, which transferred to the Secretary of State the powers and duties exercised and performed by the Ministry of Health, as successor to the Local Government Board, under the Representation of the People Acts. The Order came into operation in June, 1921.

The Ministry is divided into the following Administrative Divisions—

- I. Local Government Organization and Finance.
- II. Housing, Water, and Sewerage.
- III. Public Health: Health Services.
- IV. General Hospital Policy.
- V. General Practitioner Services.
- VI. Establishment.
- VII. Intelligence and Public Relations.
- VIII. (Temporary) Emergency Medical Services.
- IX. Government Evacuation Scheme—Care of Homeless, and Shelter Welfare.

CONSULTATIVE COUNCILS were established on 14th July, 1919. Their duties respectively are to give advice and assistance on—

1. Medical and Allied Services; 2. Local Health Administration; 3. General Health Questions.

These Councils are composed of representatives nominated by the different interests concerned, and meet as occasion requires to discuss the matters referred to them by the Minister.

Several other specialized Committees have been set up, including the Central Advisory Water Committee; the Central Housing Advisory Committee; and the Blind Persons Committee.

The Ministry of Health is responsible for the administration of the Poor Laws.

The Ministry assist the various local authorities by means of prescription of duties under statutes, by circulars of advice, by inspections, inquiries, statistical returns, and by audits. For this purpose it possesses a staff of inspectors and District Auditors. Inspectors have power to call witnesses and to hear evidence upon oath. The staff of District Auditors possess also the right to compel the attendance of persons, the production of documents, and the right of surcharge and disallowance in regard to any irregularity which they may consider exists. The Ministry also sanctions certain loans, pays grants, and approves by-laws.

Other functions include the issue of Statutory Rules, Regulations and Orders; confirmation of certain appointments; sanction of schemes of administration; the hearing of appeals and action on default of local authorities.

The Minister of Health is assisted by a Parliamentary Secretary, a First Secretary, a Deputy Secretary, and various assistant secretaries, inspectors, and other officers, including a Chief Medical Officer of Health, who is also Chief Medical Officer of the Ministry of Education.

ANNUAL RETURNS. In addition to the Annual Report, the Ministry publishes a number of Annual Returns, among which the following are the most important to local authorities—

(1) The State of the Public Health—being the annual report of the Chief Medical Officer of the Ministry.

(2) Poor Law Relief, England and Wales—showing the number of persons in receipt of relief on the 1st January, with their classifications.

(3) Rates and Rateable Values, England and Wales—showing the amount of rates in the pound, average rateable value, and rates collected per head for each rating authority, with a summary for each county.

(4) Report on the work of the Central Midwives Board.

(5) Local Government Financial Statistics: England and Wales—showing the receipts and expenditure of local authorities and their outstanding local debt as follows—

Part I. Poor Relief.

Part II. London and county boroughs.

Part III. County councils, urban district councils, rural district councils, miscellaneous authorities, and a summary for all authorities.

The following Departments are also under the Minister :—

**General Register Office.** The duty of this Department is to control the registration of births, deaths, and marriages in England and Wales, and the preparation of vital statistics. Each County and County Borough is divided into districts, each with a Registrar appointed by the Council of the County or County Borough. Over these Registrars is a Superintendent Registrar for the whole area. It is the duty of the Superintendent Registrar to verify all entries of births, deaths, and marriages, and forward them quarterly to the Registrar-General. The Department is also responsible for the arrangements of the census of population.

The Department is under the control of an Assistant Secretary in the Ministry, who is the Deputy Registrar-General of Births, Deaths, and Marriages.

**Board of Control (*Lunacy and Mental Deficiency*)** was established as the Lunacy Commission under the Lunacy Act, 1845. It was re-organized by the Mental Deficiency Act, 1913, for the purpose of administering the Acts relating to lunatics and mental defectives and reconstituted by the Mental Treatment Act, 1930.

**Central Valuation Committee** was set up under the Rating and Valuation Act, 1925. Its object is to promote uniformity and remove inequalities in the system of valuation of the whole country. Every assessment committee has to report to it annually, and it must also report annually to the Minister of Health. The Committee has issued Eight Series of Representations which were consolidated in 1933.

There is a separately organized Welsh Board of Health, and a Department of Health for Scotland.

## MINISTRY OF PENSIONS

The Ministry of Pensions Act, 1916, constituted a Minister of Pensions responsible to Parliament, and provided that "he shall be entitled to receive advice and assistance on any matter on which he may request it from the Parliamentary and Financial Secretaries of the Admiralty, the Financial Secretary of the War Office, and the Parliamentary Secretary of the Ministry of Health."

The Act transferred to the Minister of Pensions the powers and duties of the Admiralty, the Chelsea Commissioners, and the War Office in respect of the administration of pensions and grants to officers and men, and to their widows, children, and dependants. This also extended to persons in the nursing services of the Naval and Military Forces, except "service" pensions, incapacities, and pensions or grants payable out of funds provided exclusively for the purpose of Greenwich Hospital. The award of "service" pensions remains under the control of the Admiralty, War Office and Air Council.

It should be pointed out that the administration of Old Age Pensions is under the Ministry of National Insurance and whereas the functions of the Ministry of Pensions will ultimately come to an end, those of the Ministry of National Insurance will increase.

The Central Administration is assisted by a Central Advisory Committee constituted under the War Pensions Act, 1921. The work is divided between the Awards Division, the Accounts Division, Special Grants Committee, Pension Issue Office, Medical Services, and Hospitals. There are Area Offices throughout the United Kingdom. The Local War Pensions Committees were formed under the Naval and Military War Pensions Act, and reconstructed under the War Pensions Act, 1921. These Committees cover all parts of Great Britain and Northern Ireland. Each Committee includes two disabled men and one woman, all three being in receipt of pensions. The Ministry appoints local officers whose duty it is to assist both the Local Committees and the Ministry in regard to the administration of pensions, treatment, etc. There is also an Inspectorate.

The Minister of Pensions is assisted by a Parliamentary Secretary and a Permanent Secretary, together with a Principal Assistant Secretary, Assistant Secretaries, and Principals.

## MINISTRY OF AGRICULTURE AND FISHERIES

The first Board of Agriculture was created by Royal Charter



in 1793, but, though supported by Parliamentary funds, it was not so much a Government Department as a society for the improvement of agriculture. When the grant was withdrawn the Board ceased to exist.

In 1836 a body of Commissioners was appointed to carry out the provisions of the Tithe Act, 1836. By this law tithes were converted into a charge payable in money calculated on the average tithe paid in each parish during the seven years previous to 1836, and fluctuating yearly in value according to the septennial average of the prices of wheat, barley, and oats.

The Enclosure Act, 1845, provided for the appointment of a separate body of Commissioners to carry out the provisions of the Act. In 1851 the two foregoing bodies were merged into one. In 1882 the Department was reorganized under the name of Land Commissioners, when duties were imposed upon the department in connection with the Settled Land Act, 1882.

The Board of Agriculture was established in 1889 by consolidating a number of administrative functions hitherto performed by the Privy Council, the Lords Commissioners of the Treasury, and the Commissioners of Works. It was modelled after the example of the Board of Trade. Its powers were extended in 1903, when it became known as the Board of Agriculture and Fisheries. By Part I of the Ministry of Agriculture and Fisheries Act, 1919, a Minister of Agriculture and Fisheries, together with a Ministry of that name, were substituted for the Board of Agriculture and Fisheries. In December, 1919, the Ministry was reorganized.

The work of the Ministry is divided among seven divisions, six under assistant secretaries and one—the Diseases of Animals Division—under the chief Veterinary Officer. The divisions are (1) Education and Research (Agriculture and Horticulture); (2) Commercial, Land Drainage and Rural Life; (3) Markets; (4) Economics; (5) Livestock and Labour; (6) Land; (7) Diseases of Animals.

The Fisheries Department and the Welsh Department are each under the charge of a Principal Assistant Secretary. There are also the Legal Branch, and Establishment Division and Finance Division, which carry out services for the Ministry as a whole.

The Ministry is generally responsible for the control and eradication of Animal and Plant Diseases in this country; for the encouragement and development of Agricultural Education and Research; for central administration work in connection with the Improvement of Livestock, and Land Drainage and Improvement. It has powers and duties under the Diseases of



Animals Acts; the Markets and Fairs (Weighing of Cattle) Acts; the Tithe, Copyhold and Inclosure and Commons Acts; Draining and Improvement of Land Acts; the Dogs Act; the University and College Estates Acts; the Glebe Lands Acts; Agricultural Holdings Acts; Small Holdings and Allotments Acts; Land Settlement Acts; the Corn Returns Act, 1882; the Fertilizers and Feeding Stuffs Acts; Destructive Insects and Pests Acts; the Merchandise Marks Acts, relating to agricultural produce; the Food and Drugs Acts; the Salmon and Freshwater Fisheries Act, the Agricultural Wages (Regulation) Act, 1924, the Tithe Act, 1936, and the Veterinary service under the Agriculture Act, 1937. The Food and Drugs (Milk and Dairies) Act, 1944, transferred to the Minister responsibility for control of the production of milk. The registration and inspection of dairy farms is now the duty of the Minister. The Ministry is also responsible for the work under the Ordnance Survey Acts, which Department is at Southampton. The Royal Botanical Gardens at Kew, and the Plant Pathological Laboratory at Harpenden, are also included in the Ministry's responsibilities. There is a separate Board of Agriculture for Scotland and a separate Fishery Board for Scotland, but the Ministry exercises in Scotland the powers and duties under the Ordnance Survey Acts and the Diseases of Animals Acts.

The Ministry of Agriculture and Fisheries Act, 1919, Part II, introduced important alterations in the working constitution of the Ministry. For the purpose of assisting the Ministry in executing its powers and duties, the Act established a Council of Agriculture for England, a similar Council for Wales, and an Agricultural Advisory Committee for England and Wales. The Council for England consists of two members from the county and one from the county borough Agricultural Committees; six members of the Agricultural Wages Board (half of whom are representatives of workmen) and thirty-six members nominated by the Ministry. Of the latter, eight are representatives of workmen, four of owners of agricultural land, four tenants of such land, not less than three being women, six represent horticulture, and not less than three represent agricultural education and research.

The councils are to meet at least twice a year in public to discuss matters of interest relating to agriculture and rural industries. Under Part III of the Act, County Agricultural Committees are constituted as described in Chapter XV.

## MINISTRY OF TRANSPORT

In March, 1919, the Ministry of Ways and Communications

Bill received its Second Reading. It was proposed that a Ministry should be set up to co-ordinate all means of transport; to take control of railways, light railways, tramways, waterways, and inland navigation; to take over the control of electricity, and to include roads and bridges and vehicular traffic. The Bill met with a hostile reception, and certain of the proposed powers of the Minister, especially those relating to Orders in Council and control of the Port and Harbour Authorities, were considerably modified during the Committee stage. The Bill subsequently passed as the Ministry of Transport Act, 1919.

The Act established a Ministry of Transport for the purpose of improving the means of, and facilities for, locomotion and transport. It provides for the transfer to the Minister, as from such date or dates as His Majesty may determine by Order in Council, all powers and duties of any Government Department in relation to (a) railways; (b) light railways; (c) tramways; (d) canals, waterways, and inland navigation; (e) roads, bridges, and ferries, and vehicles and traffic thereon; (f) harbours, docks, and piers. These powers and duties have reference to the appointment of members, or the procedure of any Commissioners, Conservancy Board, or other body having jurisdiction with respect to any matters as aforesaid.

It is lawful for the Minister to establish, and either by himself or through any other persons to maintain transport services by land or water. Before directing any revision of rates, fares, tolls, dues, or other charges, however, the Minister must refer the matter to an Advisory Committee for its advice. It is further provided that any rates, fares, or other charges prescribed accordingly shall be deemed to be reasonable and shall be charged during the period for which the Minister retains possession of such undertaking and for a further period of eighteen months afterwards, unless otherwise provided by Parliament.

The Ministry has been organized upon broad lines. The Railway Executive, composed of the General Managers of the principal lines (created as the result of the Great war, 1914-18), is retained, but with modification. The Roads Department is separate. The rest of the Ministry is divided into departments as follows: Secretarial, Engineering, Finance and Statistics, together with an Establishment Branch and a Registry.

The work formerly performed by the Joint Roads Committee relating to public highways was transferred as from 31st March, 1920, to the Roads Department of the Ministry of Transport.

The Ministry have made a classification of all roads. Grants for the maintenance of classified roads are made to County Councils, but those to County Boroughs and London were

discontinued under the Local Government Act, 1929. Grants for new roads and major improvements are made to all highway authorities. Half the salaries and establishment charges of the engineer or surveyor of the highway authority may be paid by the Minister where the conditions of appointment, retention or dismissal of such officer are subject to the approval of the Minister.

The Minister is the sanctioning authority for money borrowed for the purposes of tramways and light railways or for purposes of Part V of the Road Traffic Act, 1930.

The Trunk Roads Act, 1936, provides for the transfer as from the 1st April, 1937, from the County Councils to the Minister of the full responsibility for the maintenance and improvement of some 4,500 miles of the more important roads used largely for through traffic and described as trunk roads. A further 3,685 miles of road, including certain selected roads in county boroughs, were transferred under the Trunk Roads Act, 1946.

The Road Board established by the Development and Road Improvement Act, 1909, has now ceased to exist, and its powers, together with certain powers of the Development Commissioners, were transferred to the Minister of Transport in 1919. The Ministry of Transport Act provides for the appointment of a Roads Committee consisting of not less than eleven members—five representative of highway authorities, five of the users of horse and mechanical road transport, and one of labour—appointed by the Minister after consultation with the interests concerned. The Committee appoint their own chairman, and the secretary is appointed by the Minister. The work has been increased by reason of the Road Traffic Acts, 1930 and 1934, and the Road and Rail Traffic Act, 1933. The London and Home Counties Traffic Advisory Committee is referred to in the chapter on London.

Under the Roads Act, 1920, the taxation of road vehicles and issue of driving licences were made the responsibility of the Minister. The work of issuing licences is carried out by the councils of counties and county councils.

**Railways Rates Tribunal**, constituted under the Railways Act, 1921, is associated with this Department. The Ministry is responsible for the work under the Road Traffic Act, 1930, including that of the Area Traffic Commissioners.

THE CONTROL OF CANALS was transferred from the Board of Trade to the Ministry of Transport under Order in Council as from 23rd September, 1919.

In June, 1920, the Minister of Transport announced that he had appointed a Departmental Committee on Inland Waterways.

The Committee have issued two Interim Reports. The first

Report in February, 1921, was not published. The second Report was issued in June, 1921, and deals with the River Trent and its connections.

At present there are about 4,600 miles of canals in the United Kingdom, of which about 1,350 miles are owned or controlled by railway companies. Dating mainly from the eighteenth century, these canals are merely narrow cuts, fitted only for barge traffic conducted at a slow rate. It remains to be seen whether these canals can become the real rival or adjunct of the railways, or whether the improvement of means of communication lies in the improvement and reconstruction of the roads.

The Nationalisation of Transport Bill, 1946, has received its Third Reading in the House of Commons as this Edition goes to press.

### MINISTRY OF LABOUR AND NATIONAL SERVICE

The Ministry of Labour was created under the New Ministries and Secretaries Act, 1916, and there were transferred to it the powers and duties of the Board of Trade under the Conciliation Act, 1896, the Labour Exchanges Act, 1909, Trade Boards Act, 1909, the Unemployment Insurance Act, 1935, and Part I of the Ministry of Munitions of War Act, 1915. The last Act has now lapsed.

Secondly, there are relegated to the Minister of Labour such other duties of the Board of Trade or of any other Government Department or authority relating to labour and industry, whether conferred by statute or otherwise, as His Majesty may, by Order in Council, transfer to him or authorize him to exercise or perform concurrently with or in consultation with the Government Department or authority concerned. The title of the Department was altered to the Ministry of Labour and National Service under an Order of 1939. The Choice of Employment Scheme for Juveniles may be administered by the Ministry or the local education authority. There are also the schemes of transference of juvenile labour and courses of instruction for unemployed juveniles. The Ministry is also responsible for the preparation of Unemployment Statistics and the Cost of Living Index. The Minister is responsible to Parliament for the Disabled Persons (Employment) Act, 1944. A National Advisory Council was established in 1945; Registers of disabled persons opened, and a Resettlement Grant Scheme inaugurated. He is also responsible for the Reinstatement in Civil Employment Act, 1944.

### POST OFFICE

The Post Office carries out the work of collecting and delivering

letters, post cards, newspapers, circulars, and parcels; and conducts money order, postal order, and savings bank business. The Department operates the inland telegraph and telephone services, cable and radio services with certain foreign countries and the Dominions, telephone services with the Continent, the United States of America, and Canada, and very rapidly extending air mail services. It collects certain local taxation licences for the Councils of Counties and County Boroughs. It sells National Insurance Stamps on behalf of the Ministry of National Insurance, Income Tax Stamps, Entertainment Duty Stamps, Inland Revenue Documents and Stamps, and National Savings Stamps and Certificates. It is responsible for the payment of War Widows' and Old Age Pensions, Orphans' Allowances and Unemployment Assistance Allowances in certain cases, and Navy, Army, and Air Force Separation Allowances and Pensions.

### MINISTRY OF WORKS

The Commissioners of Works and Public Works were appointed in 1832 for the purpose of discharging certain duties previously performed by the Office of Woods and Forests. The Department has the custody and supervision of the Royal palaces and Royal parks, and of all public buildings not specially assigned to the care of other departments, whether they are appropriated for Government offices, for national collections, or for the recreation and enjoyment of the public. It is responsible for the Inspection of Ancient Monuments, as provided by the Ancient Monuments Consolidation and Amendment Act, 1913. The Ministry became the Ministry of Works and Planning in 1942, but the latter functions passed to the new Ministry of Town and Country Planning in 1943. The Ministry supply and erect prefabricated houses under the Housing (Temporary Accommodation) Act, 1944.

### CHARITY COMMISSIONERS

The Charity Commissioners were established by the Charitable Trusts Act, 1853, "for the better administration of Charitable Trusts in England and Wales." The Commission consists of four persons; three are paid, and at least two, one of whom must be the Chief Commissioner, must be barristers of at least twelve years' standing. Their powers were extended by the Charitable Trusts Act, 1855. In 1879 the powers previously exercised by the Endowed Schools Commissioners were permanently transferred to the Charity Commissioners. It was provided by Sect. 2 (2) of the Board of Education Act, 1899, that any of the powers of the Commissioners in relation to education may be transferred by

Order in Council to the Board (now Ministry) of Education. By Orders in Council, the powers of the Charity Commissioners over all endowments for purely educational purposes were transferred, in 1899, to the Board of Education. The Commissioners are the central authority under the War Charities Act, 1916, and Sect. 3 of the Blind Persons Act, 1920, under which Acts local authorities now possess powers to register certain charities. Their consent is required for parish authorities to let any land held by them for charitable purposes for a term exceeding a year.

## MINISTRY OF FUEL AND POWER

The Ministers of the Crown (Minister of Fuel and Power) Order, 1942, transferred to the new Ministry all functions exercised by the Board of Trade in relation to—

(a) coal, minerals, mines and the mining industry, quarries and petroleum other than functions relating to weights and measures;

(b) gas undertakings and the supply of gas including functions in relation to gas under enactments relating to weights and measures;

(c) electricity undertakings and the supply of electricity, including functions relating to the Electricity Commissioners; and

(d) hydraulic power undertakings and the supply of hydraulic power.

The Ministry of Fuel and Power Act, 1945, was passed to make the Ministry permanent.

## MINISTRY OF TOWN AND COUNTRY PLANNING

In October, 1940, the Ministry of Works and *Buildings* was constituted. In July, 1942, the Ministry of Works and *Planning* was constituted. The *Minister* of Town and Country Planning Act was passed in December, 1942, and in February, 1943, the Minister, the Right Hon. W. S. Morrison, constituted the new Ministry.

## MINISTRY OF NATIONAL INSURANCE

The Ministry was constituted in 1944 for the purpose of implementing the declared policy of Social Security as outlined in the Report of Sir William (now Lord) Beveridge and the subsequent Government White Paper. It is responsible for Unemployment Insurance and Assistance; National Health Insurance; Old Age and Widows' Pensions and Supplementary Pensions; Family Allowances; and Workmen's Compensation (Industrial injuries).

## CHAPTER V

### THE JUDICATURE

THE local government administration is subject to interpretation by the Courts, and the powers and duties may be enforced by them. It is essential, therefore, that the judicial system should be studied in outline for a more complete understanding of the subject.

THE SUPREME COURT OF JUDICATURE, under the Supreme Court of Judicature (Consolidation) Act, 1925, consists of (a) High Court of Justice, (b) Court of Appeal.

THE HIGH COURT OF JUSTICE has three divisions—

- (i) The King's Bench Division.
- (ii) The Chancery Division.
- (iii) Probate, Divorce and Admiralty Division.

THE KING'S BENCH DIVISION deals with Contracts, Torts, Agency, Partnership, Companies, Sale of Goods, etc., and with criminal jurisdiction.

THE CHANCERY DIVISION has assigned to it—

- (i) The Jurisdiction exercised by the High Court of Chancery.
- (ii) *Estates*.
  - (a) The administration of the estates of deceased persons.
  - (b) The raising of portions or other charges on land.
  - (c) The redemption or foreclosure of mortgages.
  - (d) The sale and distribution of the proceeds subject to any lien or charge.
  - (e) The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases.
  - (f) The partition or sale of real estates.
- (iii) *Partnerships*. The dissolution of partnerships or the taking of partnership or other accounts.
- (iv) *Trusts*. The execution of trusts, charitable or private.
- (v) *Wards*. The wardship of infants and the care of infant's estates.
- (vi) *Statutory Jurisdiction*. Acts of Parliament have, from time to time, assigned other matters to the Chancery Court. The statutory jurisdiction of the Court of Chancery relates principally to—
  - (a) Charities.

- (b) Companies.
- (c) Trusts.
- (d) Infants.
- (e) Married Women.
- (f) Bankruptcy.

The common attribute of all these causes is that they relate to property.

THE PROBATE, DIVORCE AND ADMIRALTY DIVISION has jurisdiction *inter alia* over—

- (i) Probate of wills.
- (ii) Grants of letters of administration.

WRITS. Proceedings in the Supreme Court of Judicature are usually commenced by the issue of a Writ.

The following are some of the writs by which the Court acts in matters affecting local authorities, viz—

*The Writ of Prohibition* is directed by the High Court to an inferior court forbidding the latter to continue proceedings. The word "court" has a very extended meaning and the writ can be brought whenever a body has or exercises judicial functions. (*R. v. L.C.C.*, [1931] 2 K.B. 215; 29 L.G.R. 252.) Its function is to keep inferior courts within the bounds of the law, though it is not available merely for a wrong decision or a mistake in procedure. (*Mackonochie v. Lord Penzance*, 1881, 6 A.C. 424.) Wherever the legislature entrusts to any body of persons other than the superior courts the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Parliament. (*R. v. Local Government Board*, 1882, 10 Q.B.D. 309, 321.) Consequently, it is now applied whenever any authority has to do a judicial act as contrasted with purely ministerial acts. (*R. v. Woodhouse*, [1906] 2 K.B. 501, 535.) Thus, in *Board of Education v. Rice*, [1911] A.C. 179, the Board had by statute the duty of determining certain questions between a local authority and the managers of non-provided schools. It was held by the House of Lords that this was a judicial function for which *certiorari* might issue. Prohibition now follows the same rules. (*R. v. Electricity Commissioners*, [1924] 1 K.B. 171.)

*Quo Warranto*. The information in the nature of a *quo warranto*, which has replaced the old writ of *quo warranto*, is to determine whether the holder of an office is entitled to it. The office must be one granted by the Crown or created by statute. (*Darley v. R.*, 1846, 12 Cl. and Fin. 520.) It cannot be used



where some other remedy is prescribed by statute, such as an election petition. (*R. v. Morton*, [1892] 1 Q.B. 39.) It may, however, apply in some cases, for instance where a councillor becomes bankrupt. (*R. v. Beer*, [1903] 2 K.B. 693.) The office must be one of a public nature (which has never been defined). For instance, it was held in *R. v. Wells*, 1904, 43 W.R. 579, that a treasurer of a district council did not hold such an office.

A person injured by an illegal act of a public authority may sue for damages. If he fears future injury or a renewal of injury he may sue for an injunction—provided that the injury will be particular to himself, and not common to a class of persons. An illegal act can also be restrained by an action in the name of the Attorney-General. Declarations of right can be obtained. Sometimes, even actions for damages and criminal prosecution can be used to enforce public duties; but in a great many cases a prerogative writ is the remedy chosen. The position is thus explained by Scrutton, L.J.: "In my view the County Council, like any other body in this Kingdom, must obey the law as laid down by Parliament, and until Parliament itself alters the law, neither the London County Council nor any other body has authority to dispense with the performance of a law on the statute book." (*R. v. London County Council, ex parte Entertainments Protection Association, Ltd.*, [1931] 2 K.B. 215.)

COUNTY COURTS, under the County Courts Act, 1888, possess a limited jurisdiction.

(a) Geographically.

(b) As to amount.

Jurisdiction includes—

(i) Actions founded on contract and tort in which the amount claimed by the plaintiff is limited to £100.

(ii) Actions relating to real property of an annual value or rent of not exceeding £20.

(iii) Chancery Court actions, viz.—

(a) Equity of Jurisdiction, provided the property in dispute does not exceed £500.

(b) Ejectments, or questions as to the title to real property, if annual value does not exceed £100.

(c) Probate jurisdiction, if the estate does not exceed £200 personalty, and £300 realty.

(iv) Admiralty actions.

(v) Actions in bankruptcy and replevin to any amount.

(vi) Company winding up, when paid-up capital does not exceed £10,000.

(vii) Miscellaneous actions, including exclusive jurisdiction to—

(a) Actions by farmers for improvements, under Agricultural Holdings Acts.

(b) Actions in which the judge acts as arbitrator—

(i) Open Spaces Acts, 1877 and 1906.

(ii) Settled Land Act, 1925.

(iii) Rent and Mortgage Interest (Restrictions) Acts.

(iv) Landlord and Tenant Act, 1927.

(v) Housing Act, 1936.

LOCAL COURTS OF RECORD, which include the Lord Mayor's Court of London, the Salford Court of Record, and the Liverpool Court of Passage. These Courts are presided over by the Recorder unless there is a local Act to the contrary, as in the case of the Liverpool Court of Passage. They possess local jurisdiction according to the powers conferred by the Act of Parliament constituting the court.

PETTY SESSIONS. The qualifications for appointment of Justice of the Peace are described in Chapter X. Two Justices of the Peace or one Stipendiary Magistrate comprise a Court of Summary Jurisdiction. The Civil jurisdiction includes—

(i) Granting of certificates for diversion or stopping up of highways (Highways Act, 1835).

(ii) Appeals under the Private Street Works Act, 1892.

(iii) Town and Country Planning Act, 1932, Sect. 13.

QUARTER SESSIONS is a meeting of at least two Justices of the Peace for the County, except in the case in which there is a borough possessing a separate Court of Quarter Sessions. In the latter, the Recorder, who is a barrister of not less than five years' standing, appointed by the Crown on the recommendation of the Home Secretary, is the sole judge. A Court of Quarter Sessions is presided over by a Chairman elected from amongst the Justices of the Peace. The Administration of Justice (Miscellaneous Provisions) Act, 1938, enables a paid Chairman to be appointed.

Jurisdiction is (i) Criminal, (ii) Appellate, or (iii) Ministerial.

(i) *Criminal Jurisdiction.*

It can try all indictable offences except the following: All capital crimes and the more serious misdemeanours, viz., bribery, libel, etc.

(ii) *Appellate Jurisdiction* includes—

(a) Appeals from Courts of Summary Jurisdiction.

(b) Appeals in rating, licensing, Poor Law, bastardy, etc., cases. All licensing appeals, even from boroughs, go to County, and not to Borough, Sessions, except in County

Boroughs having a separate Court of Quarter Sessions. In such cases it is the whole body of Justices, and not the Recorder, who adjudicates on licences.

(iii) *Ministerial Jurisdiction* includes the enrolment of certificates relating to the diversion or stopping of highways, the granting of licences to keep private mental hospitals.

APPEALS—

(i) From Petty Sessions to the Court of Quarter Sessions and thence to the High Court.

(ii) From Quarter Sessions to a Divisional Court of the High Court of Justice.

(iii) From High Court of Justice to the Court of Appeal, and thence to the House of Lords.

The subject of The Judicature is dealt with more fully in *Outlines of Central Government, including the Judicial System of England.* (Pitman.)

## CHAPTER VI

### REGISTRATION AND ELECTIONS

It is only just that all classes should be represented upon our local authorities. Formerly the government of local areas was largely in the hands of tradesmen and the professional and manufacturing classes, who thus had disproportionate voting power. The majority of representatives on local bodies is still drawn from these classes. During recent years, however, the various Labour organizations, such as Trades and Labour Councils, Co-operative Societies, Housing Associations, etc., have secured seats for representatives of other points of view than trade and professional interests.

With the passing of the Local Government Act, 1933, the law relating to Local Government franchise and elections is contained in the following provisions—

The Ballot Act, 1872;

The Representation of the People Acts, 1918 to 1945;

The Municipal Corporations Act, 1882, Part IV;

The Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911;

The Local Government Act, 1933, Parts I and II, and the Second Schedule.

*The Representation of the People Act, 1945*, was passed mainly to deal with the situation arising out of war conditions. Many of its provisions are therefore of a temporary nature. These temporary provisions are dealt with later.

### REPRESENTATION OF THE PEOPLE ACTS, 1918 to 1945

**Local Government Electors.** The Acts made a sweeping change in the qualifications of electors for, and the right to vote at, Local Government elections. By the Sixth Schedule of the 1918 Act electors qualified under the provisions were substituted for any reference in any other Act to Local Government electors, county electors, burgesses, parochial electors, or other persons entitled to vote at a local government election, by whatever name called. Local Government electors so registered shall, for all electoral purposes, whether statutory or not, be in the same position as any such Local Government electors, county electors, burgesses, parochial electors, or persons.

**Local Government Franchise.** For the purpose of providing

that the Local Government franchise shall be the same for men and women, sub-sect. (3) of Sect. 4 of the Representation of the People Act, 1918, was repealed by the Representation of the People (Equal Franchise) Act, 1928. Sect. 2 of the 1928 Act was substituted for Sect. 3 of the 1918 Act. It provides that a person shall be entitled to be registered as a Local Government elector for a Local Government electoral area, if he or she is of full age and not subject to any legal incapacity, and

(a) is on the last day of the qualifying period (see below) occupying, as owner or tenant, any land or premises in that area; and

(b) has, during the whole of the qualifying period, so occupied any land or premises in that area, or, if that area is not an administrative county or a county borough, in any administrative county or county borough in which the area is wholly or partly situate; or

(c) has, or but for an incapacity arising from his status as a peer would have, a qualification as a parliamentary elector, qualifying him or her to be registered in that area.

THE REPRESENTATION OF THE PEOPLE ACT, 1945, assimilated the Parliamentary and Local Government franchises and provided for the resumption of local government elections. The former added about eight millions to the number of local government electors. Elections were resumed in the autumn of 1945 for boroughs and the spring of 1946 for other councils.

The assimilation of the franchise has removed the necessity to provide a derived vote for a spouse who is not an "occupier" but this deprives a spouse of a derived vote in respect of business premises for a parliamentary election. Moreover, a claim had to be made within a specified time to be placed on the register in respect of a business premises vote for parliamentary elections.

The annual register will now consist of two parts, namely—

(a) the "general register" for parliamentary electors and local government electors registered in respect of the new qualifications and consists of the "civilian residence," "business premises" and "service" registers;

(b) the "ratepayers register" for local government electors registered in respect of any other qualification.

**The Qualifying Period.** The "qualifying period" referred to in the Act of 1918 was amended by the Representation of the People (Economy Provisions) Act, 1926, as the three months ending on the first day of June, and including that day. In the case of a naval or military voter or a person who has been serving as a member of the Forces at any time during the qualifying period and has ceased so to serve the period of one month shall be substituted therefor.

The qualifying period was reduced to two months by the Parliament (Elections and Meetings) Act, 1943, *post*. This Act introduced a system of continuous registration based on the National Register so long as the National Registration Act, 1939, continues in operation. The registers were not actually to be prepared until an election had been initiated. The Parliamentary Elections (War Time Registration) Act, 1944, limited the qualification to a specified date instead of a period of two months.

The Representation of the People Act, 1945, substituted a qualifying day for a qualifying period. From the 1st January, 1947, the qualifying day will be the 31st July.

### ELECTIONS AND JURORS ACT, 1945

This Act makes a number of amendments in the provisions of the Representation of the People Acts, 1918 and 1945, and the Parliamentary Electors (War Time Registration) Act, 1943, as to electoral registration and voting at parliamentary and local government elections.

In particular, it provides for the preparation of a supplementary register to include service voters in respect of whom a service declaration or war worker's declaration was received after the end of June and before the end of December, 1945, and persons who ceased to belong to the forces between those dates. (Sects. 3-5.) It also extends the facilities for voting as a civilian absent voter by (*inter alia*) enabling a person who has moved to apply to have his name entered in the absent voters list. (Sect. 6.)

The Act also contains temporary provisions for the preparation of jurors books for the year 1947 and subsequent years. (Sects. 9-12.)

**Legal Incapacity.** Legal incapacity is some quality inherent in a person or for the time being irremovable in such person which, either at common law or by statute, deprives him of the status of an elector. (a) The following persons are not entitled to be registered—

(i) Undenized or unnaturalized aliens; (Representation of the People Act, 1918, Sect. 9 (3).)

(ii) Infants, i.e. persons under 21 years of age;

(iii) Idiots (*Burgess Case*, 1785, 2 Sud. 567), but persons of unsound mind who have lucid intervals may be allowed to vote;

(iv) Persons serving a term of imprisonment for treason or felony;

(v) Persons convicted of any corrupt or illegal practice, for seven years or for five years respectively from date of conviction;

(vi) Inmates or patients of a prison, mental hospital, poor law institution or similar institution cannot qualify by residence in such institutions.

It should be observed that there is now no poor law disqualification, but the time spent in an institution as a patient or inmate does not count as residence or occupation for qualifying for registration. A person alleged to be of unsound mind, if registered, may be permitted to vote if the returning officer considers him to understand what he is doing at the time. Bankruptcy is not a disqualification in itself, but it may operate to destroy the qualification for registration.

(b) A returning officer, if registered as an elector, may give a casting vote in the event of a tie, but otherwise cannot vote.

(c) In Scotland, sheriffs, sheriff substitutes, sheriff's clerks, and deputy sheriff's clerks cannot vote in the shire in which they hold office.

Peers, although not entitled to be parliamentary electors, are entitled to the Local Government franchise. Peeresses in their own right are not disqualified from being electors either for Parliament or Local Government elections. Felons convicted of a crime not punishable by death, after serving their term of imprisonment, are not legally incapacitated.

**Registration Officer.** (1) City of London—The Secondary.

(2) The County of London—The Town Clerk of the Metropolitan Borough.

(3) Parliamentary Borough—The Town Clerk.

(4) Where Registration area is a Parliamentary County contiguous with or wholly contained in one Administrative County—The Clerk of the County Council.

(5) Where Registration area is a Parliamentary County not coterminous with or wholly contained in one Administrative County—Such Clerk of the County Council as the Secretary of State appoints.

Any of the duties and powers of the registration officer may be performed and exercised by any deputy for the time being approved by the Secretary of State.

**The Register of Electors.** It is a condition precedent to exercising the vote that the elector should be placed upon the register of electors. The register is prepared once a year by the registration officer of each parliamentary borough and county. Any person may claim to be placed upon the register, and anyone whose name is on the List may object to such claims, or to any name on the Lists.

The Economy (Miscellaneous Provision) Act, 1926 (Sect. 9 (1)), provided for the substitution of one register of Parliamentary and Local Government electors for each year, instead of the spring and autumn registers provided for by the Representation of the People Act, 1918. Sect. 11 of the Act provides that Part III

thereof "may be cited as the Representation of the People (Economy Provision) Act, 1926, and shall be construed as one with the Representation of the People Acts."

Since the passing of the Representation of the People Act, 1945, these Acts are now cited as the Representation of the People Acts, 1918 to 1945.

**Machinery for Registration.** 1. Although National Registration machinery was used during the war for registration purposes, in normal times it is essential that a complete canvass should be made throughout the registration area to ascertain the names of persons qualified to be registered as electors.

2. Every occupier should, as directed in the Circular of the Home Secretary of 14th January, 1930, also be supplied with the appropriate Form of Return, A or D, and the information contained in the Return will be used for the purpose of supplementing and verifying the particulars obtained by the canvassers. Form A is for occupiers of houses, Form D for premises on which the occupier does not reside. In the delivery of the Forms, regard should be had to the remarks under Heading 2 of the Home Office Circular of 8th October, 1928, R.P. 137.

3. The Home Office issued a circular letter in April, 1930 (548894/8), with reference to certain matters in connection with the preparation of the Register of Electors and the Jurors Book.

4. The dates applicable to the proceedings in preparing the Register normally are those specified in the Third Schedule to the Representation of the People (Economy Provisions) Act, 1926, viz.—

End of qualifying period: 1st June.

Publication of electors' lists: 15th July.

Last day for notice of objections to electors' lists: 31st July.

Publication of lists of objections to electors' lists: 13th August.

Publication of lists of claimants: 13th August.

Last day for objections to claimants: 18th August.

Publication of lists of objections to claimants: 18th August (as soon as practicable after).

Last day for claims as absent voters: 18th August.

Last day for notification of desire of naval or military voter not to be placed on absent voters' list: 18th August.

5. The dates until which documents are to be kept published are set out in Schedule IX in the Representation of the People Order, R.P. 134.

6. The last day for claims for out voters in a county constituency or a district of boroughs is the 18th August.

7. The Register comes into force on 15th October.



**Appeal.** An appeal from the decision of a registration officer lies to the County Court, and on a point of law from the County Court to the Court of Appeal. Once placed upon the register any person not suffering from legal incapacity is entitled to vote. The refusal by a returning officer at an election to accept the vote of any person of capacity upon the register is an infringement of a right of property, and renders the returning officer liable to an action for damages. (*Ashby v. White*, 1703, revd. 1704, 1 Brv. Parl., Cas. 62 H.L.; 2 Lord Raymond, 938.)

**Expenses of Registration.** 1. Approved expenses of duly authorized persons in connection with the registration of electors, shall be paid by the council for whom the Town Clerk, or Clerk, is employed or designated as Registration Officer. In the case of (i) a County, out of the County Fund; (ii) a borough or urban district, out of the General Rate.

2. The Treasury makes a grant of one-half of the approved expenditure incurred by the council, in connection with the registration of electors, according to the Treasury scale.

3. Fees, etc., received by registration officers in connection with the performance of their duties, shall go to the credit of the account to which the expenses of registration are debited.

4. The council of the county or the borough are empowered to levy, as general expenses, the cost incurred or to be incurred in connection with the registration of electors, after deducting the Treasury grant, when levying their County or General Rate.

5. Districts not coterminous, or wholly contained in the administrative county or borough, having incurred expenses, such expenses shall be charged against the county or borough concerned, proportionately to the number of electors therein.

**Qualification for Election.** Unless disqualified otherwise, a person may be elected to any local authority if 21 years of age and a British subject, if a local government elector for the area, or an owner of land in the area, or has resided in the area for twelve months preceding the day of election. (Local Government Act, 1933, Sect. 57.)

In the case of an election for a parish council, the area of residence for twelve months extended to an area of three miles of the parish.

This freedom of selection possesses disadvantages as well as advantages. In many cases a representative of a ward in a large municipal area may never visit his electors except at election time. He may be completely out of sympathy with them, and, but for the efficiency of the party machine would not have the least chance of being elected. On the other hand, if the choice of candidates were limited to residents within a ward or district,

the selection would be limited and many able and capable persons would be debarred from active participation in local government affairs. It has been suggested that after a certain period, say six years, members of local authorities should be disqualified from re-election for twelve months, and in this way a wider selection of suitable representatives might be encouraged.

**Disqualifications.** The Local Government Act, 1933, Sect. 59, provides that—

(1) Subject to the provisions of this section a person shall be disqualified from being elected or being a member of a local authority if he—

(a) holds any paid office or other place of profit (other than that of mayor, chairman, or sheriff) in the gift or disposal of the local authority, or of any committee thereof; or

(b) is a person who has been adjudged bankrupt, or made a composition or arrangement with his creditors; or

(c) has within twelve months before the day of election, or since his election, received poor relief; except medical or surgical treatment or which could have been granted under the Blind Persons Act, 1920; or

(d) has within five years before the day of election or since his election been surcharged in amount exceeding £500 by a District Auditor; or

(e) has within five years before the day of election or since his election, been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and ordered to be imprisoned for a period of not less than three months without the option of a fine (*Bishop v. Deakin*, [1936] 1 Ch. 409); or

(f) is disqualified for being elected or for being a member of that authority under any enactment relating to corrupt and illegal practices; or

(g) in the case of the council of a borough is an elective auditor of a borough; or

(h) in the case of the council of a county or county borough is a paid officer engaged in the administration of the laws relating to the relief of the poor, or, having been such a paid officer, has been dismissed from his office within five years before the day of election under the provision of any enactment relating to the relief of the poor.

(2) A paid officer of a local authority who is employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority, shall be disqualified for being elected or being a member of that other local authority.

(3) The Recorder of a borough shall be disqualified for being elected or being a member of the council of the borough.

(4) A coroner for a county or a borough, or the deputy of such a coroner, shall be disqualified for being elected or being a member of the council of that county or borough.

(5) Teachers in a voluntary school shall be in the same position as respects disqualification for office as members of the authority as teachers in a county school.

(6) Six months' absence from the meetings of the council automatically create a vacancy, although the council may reinstate the member for good reasons shown.

## ELECTIONS

The system of elections for local authorities became general when the Guardians of the Poor were constituted by the Poor Law Amendment Act, 1834.

**Methods of Election.** Candidates are usually put forward by one of the three recognized parties in the country, viz., Conservative, Labour, and Liberal, but Independent candidates are not unknown.

If there are more candidates nominated than there are seats, there must be a poll of the electors. This is conducted by ballot in accordance with the Second Schedule to the Local Government Act, 1933, which contains similar provisions to and takes the place of the Ballot Act, 1872.

To prevent bribery and corruption, the Corrupt and Illegal Practices Prevention Act, 1883, has placed stringent restrictions upon election expenses at parliamentary elections. The scale of election expenses for parliamentary candidates is contained in the Fourth Schedule of the Representation of the People Act, 1918, as amended by the Representation of the People (Equal Franchise) Act, 1928. Under the 1918 Act, provision is made whereby an elector, if he thinks that anything illegal has been done, may present a petition against the return of the member elected. Since 1868, petitions are tried by two judges selected from the King's Bench Division of the High Court in England, or in Ireland for Irish cases, or to two judges of the Court of Session for Scottish cases. At the conclusion of the hearing the judges make a report to the Speaker of the result of their findings in the case, and upon this report the House of Commons will act. Similar procedure in respect of election petitions for local elections is contained in the Act of 1884.

Corrupt practices, etc., at Local Government elections are governed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, as amended.

**Municipal Election Petition, Elisabeth Ward, Berwick-upon-Tweed, in Re, Watson and Others v. Ayton.** (62 T.L.R. 242; 201 L.T. 135; (1946) W.N. 54.) In the case of an election of members of a borough council, the mayor cannot declare a nomination void on the ground that the candidate is disqualified under Sect. 59 (2) of the Local Government Act, 1933.

The mayor's authority is limited to an inquiry into the validity of the nomination having regard to the provisions of the Second Schedule to the Act. Sect. 59 (2) disqualifies a paid officer of the local authority from being elected or being a member of the local authority, not from being nominated.

**Local Government (Hours of Poll) Act, 1938.** Returning officers in county and county boroughs elections are empowered to extend the polling hours by one hour from 8 p.m. to 9 p.m. if as many candidates as there are seats to be filled in any ward give notice to that effect.

**Voting Methods.** In the single member constituencies each elector can vote for only one candidate. When, as at present, there are more than two political parties seeking the votes of the electorate, this system of election makes little provision for the representation of minorities, and can lead to strangely anomalous results.

It is mathematically possible for one party to obtain the largest aggregate votes in the country and yet not win a single seat in the House of Commons. In 1922 the Conservative Party polled 38 per cent of the votes cast in the election and obtained 347 seats in Parliament. In 1929 the Conservative Party again polled 38 per cent of the votes cast but obtained only 253 seats. In 1945 the Labour Party polled also 38 per cent of the votes but obtained 390 seats.

**Representation of Minorities.** The necessity for a reform in the methods of election is apparent and the principal proposals recommend the adoption of the Second Ballot, the Single Transferable Vote and the Alternative Vote, the latter being the most popular.

**The Alternative Vote.** The principle of the Alternative Vote is now not much favoured. In 1909-10, a Royal Commission presided over by Lord Richard Cavendish inquired into the various schemes then adopted or proposed, in order to secure a fully representative character for popularly elected representative bodies, and how far they were applicable in this country. Their conclusion was this: "We recommend the adoption of the Alternative Vote in cases where more than two candidates stand for one seat." It was not claimed that this would secure representation for minorities, but the Commission held that it would secure the rejection of a candidate unacceptable to more than half the

electors voting, and would be a Second Ballot by a less cumbrous system. The principle was also incorporated in the Electoral Reform Bill, 1931, which was ultimately withdrawn.

The method of working is this: The voter is asked to arrange the candidates in the order of his choice by placing the figures 1, 2, 3 against their names. At the first count only first votes are reckoned. If this shows that no candidate has obtained an absolute majority the candidate receiving the smallest number of first votes is regarded as eliminated, and his voting papers are distributed according to the names, if any, marked 2 on them. The papers on which no second preference is marked are regarded as exhausted, and their number is deducted from the total for the purpose of calculating the absolute majority at the second count. If no candidate has still received such a majority (which, of course, could only happen if more than three candidates originally stood) the process would be repeated as often as necessary until the desired result was obtained.

This, it will be seen, would be a simple change involving no redistribution of seats or other electoral upheaval.

**Minority Representation.** The influence of the minority was at first recognized by the provision of the Cumulative Vote (now obsolete), which was established to secure representation of the minority. The term "plumping" is, however, still used in elections when a voter possessing several votes uses only one. For instance, if four candidates are standing for three seats, a voter having a special interest in one candidate to the exclusion of any of the other three, records only one of his votes, thus refraining from helping any of the other candidates. The system of the Single Transferable Vote, known as Proportional Representation, aims at giving representation to the minorities.

**Voting.** To vote is a duty and a trust. The suggestion has been made that the vote should be forfeited where no reasonable explanation can be given for not exercising the franchise when opportunity offers as in certain European countries, e.g. Czechoslovakia, also in certain Dominions, e.g. Queensland, Victoria and New South Wales. The development of a sense of responsibility in the government of their local area should do much to stimulate interest of the citizens in these elections.

**The Blind Voters Act, 1933,** amended the Ballot Act, 1872, so as to enable any blind voter at a poll regulated by that Act to avail himself of the assistance of a relative or friend, in recording his vote, and so avoid the necessity for using the service of the polling staff for this purpose. This Act has been repealed and reproduced in the Local Government Act, 1933, pars. 20 and 21 of the 2nd Schedule, Pt. III.

**Returning Officers' Expenses.** The Representation of the People (Returning Officers' Expenses) Act, 1919, provides that the charges of returning officers at Parliamentary elections (other than university elections) shall be charged and paid out of the Consolidated Fund.

**Limited Companies.** These have no right to a vote, although suggestions to make provision for such a right to be exercised have been made from time to time. In Northern Ireland, such a right has been conferred on the basis of the nomination of a representative to vote in respect of every £10 of rateable value and occupied and assessed up to a maximum of six votes. A similar right is in existence in the City of Dublin.

### **JURORS, QUALIFICATION OF**

The Juries Act, 1922, provided that the separate list of jurors disappeared but the qualifications and disqualifications remained. The procedure is prescribed by the Juries Act, 1922, and the Juries Order, 1927, as amended by the Local Government Act, 1929, Sect. 79. By Sect. 81 of the latter Act, the Registration Officer may obtain from the Inspector of Taxes copies of annual values for the time being in force for purposes of Income Tax, but such returns should be necessary only in border-line cases where special difficulty arises. The Local Government Act, 1933, Sect. 297, contains similar provisions.

The Electors and Jurors Act, 1945, requires registration officers to transmit copies of electors' lists to rating officers to mark those liable for service to be entered in Jurors' Books compiled annually. A person marked for the first time must be notified by the registration officer.

## SECTION II

# LOCAL AUTHORITIES IN ENGLAND AND WALES

### CHAPTER VII

#### THE PARISH COUNCIL

THE original unit of settlement among the Saxons in England was the "tun," or town, which originally meant simply an enclosure surrounded by a wall or hedge. The township, or "tun-scape," was merely the area claimed by the town.

#### THE TOWNSHIP

This area bore a strong resemblance to the type of organization common to the whole of the earlier settlers of Aryan origin. In all cases there was the system of common husbandry, with the three-field system which existed in many parts of England until the Inclosure Acts. The work of the township was carried on by the groups of householders who made up the population of the township and who carried on the business in the town "moot," or meeting. At this meeting the various officials would be appointed, and the common law would be promulgated. Later, with the rise of the hundred and the shire, the township would send its reeve and four best men to represent it in the courts of the hundred and the shire. With the advent of Christianity and its development under the Saxon Ethelbert of Kent, the work of organization for ecclesiastical purposes followed. Archbishop Theodore of Tarsus accepted the Saxon unit, but applied to it the ecclesiastical term of "parish," from the Greek *paroikia*, the neighbourhood, i.e. inhabited district near a church. In the majority of cases the township and the parish coincided, but in the South, where the population was numerous, two or more parishes might be formed out of one township; while in the North, where the population was scattered, townships might be combined into one parish under a single priest. A township not included in a parish was known as "extra parochial," and is so termed to this day.

#### THE MANOR

The advent of the feudal system witnessed the rise of the manor, the land of which was held by the lord from the King. The main idea of feudalism was the dependence of the vassal on

the lord above him, as opposed to the inter-dependence of the members of the co-operative group within the township. Each manor possessed its free tenants and villeins, of whom two at least existed for the purpose of a court-ban, over which the lord presided. In cases where the lord possessed several manors, he was represented in each by a resident steward, who held the manorial courts, which possessed jurisdiction both fiscal and criminal. The feudal system possessed many advantages for the tenants, but the protection which it afforded was purchased only by the surrender of the independence which the Saxon system had created. The Court Leet replaced the Town Meeting, and when the ancient liberties were attacked, the priest, who was probably the only educated man in the parish, would gather his congregation together within the church, to discuss with them the plan of campaign against the attacking party. At the same time the ecclesiastical affairs of the township would also be discussed. Later on, the meeting-place was changed to the vestry or robing-room of the church, and so originated the Vestry Meeting. Meanwhile, the feudal system decayed and the system of Local Government in England became almost extinct, to be revived later with the rise of the Poor Laws and their consolidation in 1601. Churchwardens, who had been appointed to protect the church property, were given powers under the poor laws. In the eighteenth century, before the power of the parish and vestry began to decline, the parish was the main seat of Local Government. During the nineteenth century the powers diminished as from the passing of the Poor Law Amendment Act, 1834.

## THE PARISH

As a result of the Local Government Act, 1894, the parish is once more the unit of Local Government in rural areas. This Act was an attempt to revive parochial life in rural districts. The chaos which existed has been replaced by a reduction of authorities and by a simplification of areas, to which reference has been made. The idea of those who were responsible for the passing of the reforms was to establish a popular form of administration for minor local matters, and by establishing the County Councils, under the Local Government Act, 1888, to create an authority with large administrative powers to whom appeal could be made in matters of more importance. The whole of England and Wales is mapped out into parishes which are either urban or rural. Every person is resident within such a parish. For Local Government purposes, the parish meant until the coming into operation of the Rating and Valuation Act, 1925, on the 1st April, 1927, "a place for which a separate poor rate is or can be made, or for



which a separate overseer is or can be appointed." The Rating and Valuation Act, 1925, defines a parish to "mean a place for which immediately before the appointed day a separate poor rate was or could be made or a separate overseer was or could be appointed," and this Act also includes, unless the context otherwise requires, any part of a parish being either a contributory place or an area otherwise subject to separate or differential rating. (Sect. 68 (4).) The parish is not only the unit of Local Government, but may be considered as the original area for Local Government. Out of it developed the original Parliament.

The Civil Parish is either urban or rural. Any parish which lies within a borough or urban district is an Urban Parish; all other parishes are Rural Parishes.

There are also Ecclesiastical and Land Tax Parishes, which are not, however, units for any Local Government purpose.

The Local Government Act, 1894, is often referred to as the "Peasants' Charter" or Parish Councils Act, because it established the Parish Council in the more populous rural parishes in England and Wales. The provisions have been almost entirely repealed and re-enacted with modifications in the Local Government Act, 1933. The rural parish is governed by a Parish Meeting, and/or a Parish Council.

## PARISH MEETING

The Parish Meeting is an assembly of the Local Government electors of the parish. All rural parishes must hold a Parish Meeting. In parishes with a population below 200 and in those above 200 and below 300 which have not made application for a Parish Council it is the sole authority for the parish.

*Where no Parish Council is elected*, the following provisions apply—

(1) The Chairman of the Parish Meeting and the councillors for the time being representing the parish on the Rural District Council are a corporate body with perpetual succession, but without a common seal. They are called the representative body of the parish. Instruments are executed under the hand and seals, if required, of the Chairman and two other Local Government electors present at the Meeting.

(2) There must be an annual meeting between 1st March and 1st April, and one other meeting during the year. Further meetings may be called at any time by the Chairman of the Meeting, the representatives of the parish on the Rural District Council, or any six electors. Such meetings must not begin earlier than 6 p.m., nor be held on licensed premises.

(3) Every Parish Meeting chooses its own Chairman, who is

elected at the annual meeting, and presides by right at other meetings. Every elector has one vote, and every question is in the first instance decided by the majority of those present and voting. A majority of not less than one-third of those present, or five persons, may claim a poll of all the electors in the parish. Such poll must be taken by ballot.

(4) Where there is a Parish Council, only an Annual Parish Meeting need be held. The Chairman of the Parish Council and any two parish councillors may then call further Parish Meetings. The Chairman of the Parish Council will then preside at Parish Meetings except during elections of parish councillors at which he is a candidate.

**Committees** may be appointed by the Parish Meeting for any purpose. All the acts of Committees must be submitted to the Meeting for its approval.

**THE POWERS AND DUTIES** of a Parish Meeting include—

(1) The power and duty of appointing two members of the Rating Authority under Sect. 1 (4) of the Rating and Valuation Act, 1925, to take part in the proceedings when the part of the List affecting their parish is under consideration.

(2) The control over and approval of the disposal of parish property.

(3) The right of veto in reference to the closing or diversion of any highways in the parish, and to the adoption by the Parish Council of the Adoptive Acts, as described in Chapter XV.

(4) The power of appointing trustees of a non-ecclesiastical charity.

(5) If there is no Parish Council, as the Minor Education Authority under the Education Act, 1944, they may appoint one-third of the managers of a county primary school and one-ninth of the managers of an aided school and twice that number of managers of a controlled school which serves the area of the parish.

(6) Its consent is also necessary to enable the Parish Council to incur expenditure necessitating a rate above 4d. in the £, to the raising of any loan.

(7) On the application of the Parish Meeting, the County Council may by order confer on that Meeting any of the functions of a Parish Council. (Local Government Act, 1933, Sect. 273.)

**Officers.** It cannot appoint a paid officer without the consent of the County Council.

**Rates.** The Parish Meeting cannot levy a rate. The expenditure is met by precepts on the Rating Authority. It is limited to an amount not exceeding a rate of 8d. in the £ *inclusive* of expenditure under the Adoptive Acts. The Minister may authorize a higher rate by Order.

**Accounts.** The Chairman must keep such Accounts as may be prescribed. These are made up yearly to the 31st March, and audited by the District Auditor of the Ministry of Health.

## PARISH COUNCIL

A Parish Council must be elected in all rural parishes where the population is 300 or over. If the population is under 300 and over 200, then it may be elected where the Parish Meeting so resolves. If the population is under 200, then not only must the Parish Meeting so resolve but the consent of the County Council must also be obtained.

Parishes may be grouped under one Parish Council by an Order issued by the County Council with the consent of the Parish Meetings concerned.

**Constitution.** A Parish Council consists of from five to fifteen members as may be fixed from time to time by the County Council. Councillors are elected for three years by the Local Government electors in accordance with the Parish Councillors Election Rules, 1934.

The election takes place at the Annual Parish Meeting (which may be made the statutory Annual Meeting) by show of hands, or by poll when this is demanded. The electors are the Local Government electors of the parish. The County Council may, at the request of the Parish Council or Meeting, direct that the election shall be by nomination and, if necessary, by a poll.

Councillors' qualifications and disqualifications are given in Chapter VI.

A casual vacancy may be filled by the Parish Council. Upon the application of the Parish Council or one-tenth of the electors, the County Council may divide a parish into electoral wards, and fix the number of councillors for each ward.

A Parish Council is a corporate body with perpetual succession, but without a common seal. Any Act may be signified by an instrument under the hands (and seals if required) of any two councillors. The Chairman may be elected from outside the council, but must be qualified to be a councillor.

**Meetings.** There is an Annual Meeting on or within fourteen days after the 15th April, and at least three other meetings. Other meetings may be called by the Chairman or two councillors. One-third, but not less than three members, constitute a quorum.

**Committees** may be appointed by the Parish Council for any purpose, including a Parochial Committee under the Public Health Acts.

**The Powers and Duties** of a Parish Council may be grouped as follows—

(a) GENERAL. The Parish Council takes over the functions of the Parish Meeting as set out in items (1) to (5) inclusive on page 163 *ante*. The Parish Meeting reserves the right to give or refuse consent to the sale or exchange of land or the adoption of Adoptive Acts. The Parish Council may appeal against the valuations of its own or any other parish, and against the General Rate. It may provide a parish room, books and chest for the safe custody of the records. Under the provisions of the Fire Brigades Act, 1938, the Rural District Council formerly became responsible for fire prevention services, but these were transferred to the National Fire Service during the war.

(b) SANITARY. The Parish Council is not a sanitary authority, but may act as Parochial Committee, by arrangement, for the Rural District Council within whose area it is situated. It may cleanse ponds and ditches and utilize any water in the parish for the provision of water supply. It can take measures to prevent the spread of danger from stagnant water or refuse.

(c) HOUSING. The Parish Council can also make representations to the Medical Officer of Health under the Housing Act, 1936.

(d) HIGHWAY. The Parish Council *may* maintain and repair foot-paths not being on the public highway, and in certain cases maintain rights of way, and veto the stopping or diversion of highways.

(e) EDUCATION. It is the Minor Education Authority, exercising powers similar to those described for a Parish Meeting, and in lieu of the Meeting.

(f) LAND. The Parish Council may acquire land by agreement for any of their functions including: public offices, recreation grounds, rights of way, baths and wash-houses, burial grounds, and libraries. If unable to acquire the necessary land by agreement, provision is made for application to the County Council, who are authorized to acquire the land by compulsory purchase on behalf of the parish.

(g) BATHS AND WASHHOUSES may be provided.

(h) SMALL HOLDINGS AND ALLOTMENTS. It may make representations to the County Council respecting small holdings. It must provide allotments, and for that purpose may, with the consent of the County Council, hire land compulsorily for a period of from seven to thirty-five years.

(i) ADOPTIVE ACTS. The Parish Council may, if adopted by the Parish Meeting, administer the Parochial Adoptive Acts (described in Chapter XV).

(j) MISCELLANEOUS. Powers include that of making good the loss incurred in the provision of additional postal facilities under the Post Office Act, 1908 (Sect. 49 (3)); the provision of mortuaries and the burial of dead bodies unclaimed by relatives.

**Officers.** The officers are Clerk and Treasurer. The Clerk may be a member appointed without remuneration, or other fit person who may be appointed at a salary. The council may appoint one of their own number or some other fit person to be Treasurer without remuneration.

**Rates.** Expenses are met by precepts on the Rural District Council as rating authority. The annual expenses (other than those incurred under the adoptive Acts), must not exceed an amount equal to a rate of 4d. in the £ without the consent of the Parish Meeting, and shall not exceed a rate of 8d. in the £, except that the Minister of Health may by Order fix some higher rate than 4d. or 8d. respectively in respect of any particular parish.

**Loans** may be raised by mortgage subject to the approval of the Parish Meeting and the County Council. The latter Council is authorized to lend to a Parish Meeting or Council any money they are authorized to borrow.

**Accounts.** The Parish Council must keep such Accounts as may be prescribed by the Minister of Health. These must be made up yearly to the 31st March, and are audited by the District Auditor of the Ministry of Health. (See Chapter XXIX.)

**Promotion of Parish Council to a District Council.** Although the Parish Council was originally intended for the administration of rural areas, there are certain parishes with populations of several thousands governed by Parish Councils. Such parishes should be under Urban District Councils and the change in constitution may be effected as described in Chapter VIII.

**Relation Between the Parish and the District.** If the boundaries of a rural district are co-extensive with a single parish, then the Rural District Council will possess the powers and duties of a Parish Council, e.g. Pennal (Merionethshire) and Disley in Cheshire.

## ROYAL COMMISSION ON LOCAL GOVERNMENT

In August, 1926, it was announced that the terms of reference to the Royal Commission had been extended so as to enable the Commission to make recommendations as to the constitution, areas, and functions of Parish Councils and Parish Meetings, and to investigate the relations between these authorities and other local authorities within the scope of the Commission's inquiry.

## FINAL REPORT OF ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

### Part I. Functions of Parish Councils and Parish Meetings.

#### (a) POWERS AND DUTIES OF PARISH COUNCILS AND PARISH

MEETINGS. (i) *Scavenging*. In the event of a Rural District Council declining to supply a scavenging service in a parish which desires it and is willing to bear the cost, the Minister of Health should be empowered either to require the District Council to act at the expense of the parish, or, alternatively, to authorize the Parish Council themselves to provide the service.

(ii) *Village Halls*. Provision should be made to enable a Parish Council to contribute towards the provision or maintenance of a village hall or recreation ground which is not vested in the council.

(b) PROCEDURE FOR ADOPTING THE LIGHTING AND WATCHING ACT, 1833. It would be desirable to repeal this Act, and to rely upon the provisions of the Public Health Act, 1875.

(c) LIMITATION OF EXPENDITURE. The limits of expenditure of a Parish Council with and without the consent of the Parish Meeting, should be extended by 50 per cent, in addition to the 33½ per cent increased authority under Sect. 75 of the Local Government Act, 1929.

(d) EXPLANATORY LEAFLET AS TO FUNCTIONS OF PARISH COUNCILS AND PARISH MEETINGS. *The Minister of Health* should issue, in as simple a form as possible, a clear and authoritative statement of the powers and duties of Parish Councils and Parish Meetings.

(e) PAROCHIAL COMMITTEES. (i) The development of the Parochial Committee system would facilitate the exercise of urban powers in rural districts, and would remove many difficulties.

(ii) In the event of a Rural District Council declining to comply with a request from a Parish Council or a Parish Meeting for the creation of a Parochial Committee, the Parish Council or Parish Meeting should be empowered to appeal to the County Council against the refusal, and the County Council should be empowered, if they think fit, to direct the District Council to create such a committee.

(iii) Facilities should be provided for the creation, where desired, of a Parochial Committee for two or three parishes or contributory places.

(f) LIAISON BETWEEN RURAL DISTRICT COUNCIL AND PARISH COUNCIL. The representative of a Parish on the Rural District Council should be *ex officio* a member of the Parish Council. In cases where a parish has several representatives on the District Council, it might be provided that the senior representative should be *ex officio* a member of the Parish Council, or that the Parish Council should be empowered to co-opt on the Parish Council one member from among the parish representatives on the District Council.

**Part II. Matters Relating to the Constitution of Local Authorities.** **ELECTION OF PARISH COUNCILLORS.** As alternatives to the present system of election by show of hands, it should be competent for the County Council, either on their own initiative or upon a representation from the Parish Council or Parish Meeting, or from not less than ten ratepayers of the parish, to make an order putting into operation either—

- (a) A scheme of election as outlined in the report.
- (b) The Ballot Act.

The scheme as recommended by the Commission has now been incorporated in the Local Government Act, 1933, Sect. 51.

### SCOTLAND AND IRELAND

There are no Parish Meetings in Scotland or Ireland. The Parish Council in Scotland which was abolished by the Local Government (Scotland) Act, 1929, was the equivalent of the former Board of Guardians in England and Wales. There are no Parish Councils in Ireland.

### THE URBAN PARISH

There are no Parish Councils or Meetings in urban parishes, the functions of Local Government being performed by the Borough or Urban District Councils. Up to 1894, the Vestry possessed both civil and ecclesiastical powers. It is now concerned only with the election of churchwardens, the making of voluntary Church Rates, and other ecclesiastical matters.

## CHAPTER VIII

### THE DISTRICT COUNCIL

THE District is primarily the Local Government unit for public health purposes. The sanitary laws of England and Wales are enforced in urban areas by the Borough Council or Urban District Council, and in rural areas by the Rural District Council.

In Saxon times the local unit next above the parish was the Hundred, an institution found under various names such as Wapentakes, Rapes, Commotes, etc., all over Western Europe. This is thought to have been the ancient "run" of a pastoral group, or clan, out of which, as agriculture developed, sub-settlements of agricultural villages, or townships, were created. At the dawn of English history we find as a well-established institution the attendance of the village representatives ("reeve, priest and four men") at the Hundred moot. This is often spoken of as the first example of political representation in England. The Hundred still exists for judicial purposes, e.g. licensing and registration of houses for persons of unsound mind.

### CREATION OF DISTRICTS

The District is governed by an Urban or a Rural District Council, established under the Local Government Act, 1894, now regulated by the Local Government Act, 1933. The Urban District Council replaced the old Improvement Commissioners and Local Boards, and the Rural District Council took over the sanitary powers previously exercised by Boards of Guardians in rural areas.

The borough, being an urban area, has its public health and highway work under the control of the Borough Council.

This division into urban and rural areas, was made under the Public Health Act, 1872. This Act divided the country into Urban and Rural Sanitary Districts and constituted the Boards of Guardians the sanitary authority in rural areas and the Borough Councils, Improvement Commissioners or Local Boards the sanitary authority in urban areas. Although it was the intention in 1872 that districts with a population of 3,000 and upwards should be constituted urban districts and that the remaining areas should be rural districts, this has not been adhered to. There are rural districts with populations much in excess of that number and containing within their areas towns which should be constituted urban districts.



## ESTABLISHMENT OF DISTRICT COUNCIL

The Local Government (Boundary Commission) Act, 1945, transfers the powers of the Minister of Health and the county councils with regard to the creation of new districts and the alteration of boundaries to the Boundary Commission.

**Division of District into Wards.** Where a rural district is not otherwise divided into electoral areas, there is a separate election for each parish. The County Council may make an order dividing a parish into wards, or combining parishes for purposes of election. The electoral divisions of an urban district are not so readily altered. Where the urban district is not divided into wards, there is one election for the whole district. If the County Council is satisfied that a *prima facie* case exists for the division of the urban district into wards, a local inquiry may be held, and, if the County Council is satisfied, a draft order must be prepared and published, and representations invited and heard before the final order is made. In this manner the number and boundaries of wards and the number of councillors for each ward may be altered. Should a County Council fail to act on the proposals of an Urban District Council, the Secretary of State may make an order.

The County Council has power to divide an urban district into wards and fix or alter the number of rural district councillors for each parish, and it may also add parishes together or divide them into wards. (Local Government Act, 1933, Sects. 37 and 38.)

**Re-arrangement of County Districts.** The Local Government Act, 1929, Sect. 46, required the County Council as soon as possible after the commencement of the Act, after conferences with the councils of the several districts wholly or partly within the county, to review the circumstances of all such districts and consider whether it was desirable to effect any administrative changes. Subsequent periodical reviews, however, could be made, but the interval between reviews had in no case to be less than ten years. (Local Government Act, 1933, Sect. 146.)

The reviews are now the responsibility of the Local Government Boundary Commission.

## CONSTITUTION OF DISTRICT COUNCIL

The number of councillors varies, but there must be at least one councillor for every parish of 300 population. (Local Government Act, 1933, Sect. 38 (2) (b).) Councillors are elected for three years from 15th April in the year of election, by the Local Government electors. As a rule, one-third retire annually, but acting upon a resolution passed by two-thirds of the

members present at a meeting of the District Council, the County Council may by order direct that all the district councillors shall go out of office together in every third year. The voting at the election for district councillors is by ballot, and each elector has one vote for each of any number of councillors to be elected. The election is conducted under Election Rules made by the Secretary of State. Each candidate must be nominated in writing on a form which must be returned to the Clerk, who is the Returning Officer.

Councillors' qualifications and disqualifications are given in Chapter VI.

THE DISTRICT COUNCIL is a corporate body with perpetual succession and a common seal, and may hold land for the purposes of its powers and duties without licence in mortmain (the permission given for land to be held perpetually in the corporation).

THE CHAIRMAN is elected by the councillors and may be elected from outside the councillors, but must be qualified to be a councillor. Unless personally disqualified by any Act, the Chairman is, by virtue of his office, a Justice of the Peace for each county of which the district forms a part. (Local Government Act, 1933, Sect. 33.)

A Vice-chairman is elected and holds office until immediately after the election of the new Chairman. (*Ibid.*, Sect. 34.)

**Meetings.** The District Council must hold an Annual Meeting and at least three other meetings every year. Other meetings may be called by the Chairman and by any five members or one-fourth of the whole number of members, whichever is least. One-third, but not less than seven members, constitute a quorum.

**Minutes.** Local authorities are required to keep minutes of every meeting. The minutes must be entered in a book for the purpose and duly signed. (*Ibid.* Third Schedule, Part V, 3 (1).)

**Committees.** District Councils may act through committees, which need not consist exclusively of members of the council, but co-opted members must not exceed one-third. Members of committees hold office for one year only. No District Council can delegate to any of its committees the power to levy a rate or raise a loan.

**Differences Between an Urban and a Rural District Council.** An Urban Council has necessarily greater sanitary powers. Urban areas and particularly boroughs are very different from rural areas, for masses of human beings, when living in a limited space, might create more nuisances than the scattered inhabitants of a

rural area. On the other hand the agricultural interests of rural districts require special consideration.

## POWERS AND DUTIES

Powers and duties may be divided under three heads, viz. those common to Urban and Rural District Councils; those applicable to Urban District Councils only; and those applicable to Rural District Councils only.

POWERS AND DUTIES COMMON TO URBAN AND RURAL DISTRICT COUNCILS include—

(1) *Public Health functions under various enactments* as described in Chapter XII, including water supply.

(2) *Highway Powers.* County Councils have power under the Local Government Act, 1929, to delegate highway powers to District Councils as described in Chapter XVIII. District Councils are required to protect all public rights of way, and to protect the roadside wastes from encroachment.

(3) *Land.* Any District Council may aid persons in maintaining rights of common; and may provide and maintain open spaces.

(4) *Powers under the Housing Acts, and Town and Country Planning Acts,* as described in Chapters XIII and XIV.

(5) *By-laws.* Power to make by-laws as described in the chapter on Public Health, subject to the confirmation of the Minister of Health.

(6) *Bills in Parliament* may be promoted or opposed in accordance with the Local Government Act, 1933, Sect. 253.

(7) *Incorporation as a Borough.* The council of any district, irrespective of population, have power to apply for Charter of Incorporation, under the Local Government Act, 1933, Sect. 129.

(8) Power to issue stock. (Local Government Act, 1933, Sect. 196.)

(9) Rating authority under Rating and Valuation Act, 1925.

(10) Inspection of electric lighting and provision of electricity supply.

(11) Acquisition of ferries.

(12) Provision of light railways.

(13) Railway rates applications.

(14) Aiding small harbour authorities.

(15) Aiding Joint Electricity Authority (population 50,000).

(16) Fire prevention. (Transferred during 1939-45 war to Home Office and Ministry of Home Security.)

(17) Small dwellings acquisition advances; subject to the consent of the county council if the population is less than 10,000.

(18) Control of fairs.

- (19) Securing additional postal facilities.
- (20) Ambulance and nursing provision.
- (21) Provision of baths and washhouses.
- (22) Superannuation of officers.
- (23) *Miscellaneous powers* include the former powers, duties, and liabilities of Justices out of session, including the granting of certain licences to gang masters, pawnbrokers, dealers in game, passage brokers, and emigrant runners. The District Council also possesses the former powers and duties of Quarter Sessions in relation to the licensing of knackers' yards within the district.

POWERS APPLICABLE TO URBAN DISTRICT COUNCILS ONLY include—

- (a) *Irrespective of population*—
  - (1) Certain public health functions relating to urban areas, e.g. control of offensive trades.
  - (2) Until the 1st April, 1930, the District Councils had supreme control of all highways except those county roads the control of which was vested in the County Council. Urban District Councils continue to manage all streets and unclassified roads within their districts, but all public roads in a rural district and classified roads in an urban district are controlled by the County Council.
  - (3) The council may be the Minor Education Authority and appoint managers to primary schools serving the district.
  - (4) Maintenance of libraries, museums and art-galleries.
  - (5) Street lighting authority.
  - (6) Power to advertise amenities.
  - (7) Provision of esplanades, piers and airports.
  - (8) Authority under the Fabrics (Misdescription) Act, 1913.
  - (9) Provision of allotments (Small Holding and Allotments Act, 1908, Sect. 23 (1)).
  - (10) May undertake within statutory limits the management of trading undertakings, e.g. gasworks, transport, etc.

(b) *Where the population is 10,000 or over*—

The Urban District Council is the authority for—

- ✓ (1) Regulation of advertisements under the Regulation of Advertisements Acts, 1907 to 1925.
- ✓ (2) Establishment of Allotments Committee under the Allotments Act, 1922, Sect. 14 (1).
- ✓ (c) *Where the population is 15,000 or over*—
- ✓ Registration authority under the War Charities Act, 1940.

(d) *Where the population is 20,000 or over*—

The Urban District Council is the authority under the Old Age Pensions Acts, and the Shops Acts. The right to maintain county roads may have been claimed from the County Council,

in accordance with the Local Government Act, 1929, as described in Chapter XVIII.

**Education.** Where the population is not less than 60,000, according to the census of 1931, the Urban District Council may have their own scheme of delegation as a Divisional Education Executive in respect of primary and secondary education and in special circumstances further education under the Education Act, 1944. In urban districts with a population below this number, and in all rural districts, the educational work is controlled by the County Council.

(d) *Where the population is 25,000 or over—*

The Urban District Council may petition for the appointment of a Stipendiary Magistrate under the Stipendiary Magistrates Act, 1863.

(e) *Where the population is 40,000 or over—*

Authority under the Food and Drugs Act, 1938.

(f) *Where the population is 50,000 or over—*

The Urban District Council may set up a Local Committee under the Naval and Military War Pensions, etc., Acts, 1915 to 1917. Control of speed limit areas.

**POWERS AND DUTIES APPLICABLE TO RURAL DISTRICT COUNCILS ONLY** include:

(1) A rural district is usually of much greater extent than an urban district. It is more sparsely populated, and is subdivided into parishes with Parish Councils or Parish Meetings.

(2) Power to delegate sanitary duties to a Parochial Committee, of the Parish Councils within its area. (Local Government Act, 1933, Sect. 85.)

(3) If its boundaries are co-extensive with those of a parish, a Rural District Council will possess the powers and duties of a Parish Council. This is illustrated by the Disley Rural District Council in Cheshire.

(4) A Rural District Council has the power to apply to the Boundary Commission to become an Urban District Council.

(5) The Ministry of Health may by Order confer on a Rural District Council all or any of the powers of an Urban authority.

(6) Power to levy Special Expenses Rate on part only of District.

(7) Power to claim £1 10s. per house from the County Council in respect of houses for agricultural workers.

**General Orders.** The Rural District Council (Urban Powers) Order, 1931, conferred upon rural district councils the powers, duties, and liabilities of urban local authorities under certain

provisions of the Public Health Act, 1875, and the Public Health Acts Amendment Act, 1890. These have been incorporated in the Public Health Act, 1936.

## OFFICERS

The officers appointed by a District Council include the Clerk, Treasurer, Surveyor, Medical Officer of Health and Sanitary Inspector. The two last named offices may be held by the same person.

The Clerk and Treasurer are appointed specially. The offices of Clerk and Treasurer of a local authority (except a Parish Council) must not be held by the same person or persons who stand in relation to one another as partners or as employer and employed.

The appointment of the Medical Officer of Health and Sanitary Inspector is subject to the approval of the Minister of Health. The salary paid to these two officers requires the approval of the Minister and with that approval a medical officer may be paid a reasonable sum on account of any extra services performed by him or on account of unforeseen circumstances connected with his duties or the necessities of the district. (Local Government Act, 1933, Sect. 107.) The Local Government Act, 1929, Part IV, provides facilities for furthering the appointment of full-time Medical Officers of Health. The payment of the grant of one-half of the salaries of the medical officer and sanitary inspector by the County Council depends upon compliance with the regulations prescribed by the Ministry of Health, which require *inter alia* that these officers shall not be dismissed without the approval of the Minister. ✓

All Urban District Councils appoint a surveyor. The appointing of a surveyor is optional in rural areas, but Rural District Councils maintaining their roads under delegation from the County Council will require a surveyor.

✓ Every District Council has power to employ such other officials, technical or clerical, as it considers necessary in its particular circumstances, e.g. a Collector of Rates is also required.

✓ A member of an Urban District Council cannot be appointed clerk to, or paid officer of, the council, or for twelve months after ceasing to be a member, and this applies even if he resigns from the council and serves in an honorary capacity for the first twelve months. (*Attorney-General v. Ulverston U.D.C.* (1944), W.N. 87: 60 T.L.R. 256.)

## RATES

As far as the expenses of a District Council are not met from other sources, a General Rate must be levied therefor, as

provided by the Rating and Valuation Act, 1925. The expenses included in such a rate comprise all those expenses incurred by a District Council which are not, either by established custom or by the express provisions of some statute, payable out of a special fund. Valuation Lists are prepared by the Rating Authorities and revised by the Assessment Committee. The General Rate is based thereon and is made, levied, and collected by the District Council. The subject of rating is dealt with fully in Chapter XXVIII.

Relief to certain hereditaments is continued under the Act, viz. railways, canals, land covered with water; tithes, and payments in lieu of tithes are exempt to the extent of three-fourths of their value in *urban* districts but in *rural* districts for special purposes only.

The partial derating of railways and canals and the extinguishment of tithe rentcharges have greatly reduced the effect of this provision; but its effect upon waterworks is still considerable.

The expenditure of a rural district may be divided into general expenses and special expenses.

**GENERAL EXPENSES** are those which benefit the inhabitants generally, and include establishment charges, salaries of officials, expenses of disinfection, etc. These are paid out of a "common fund" raised equally over the whole district. The Public Health Act, 1936, enables the County Council to contribute to expenses of water supply, sewerage and sewage disposal in any district. (Sect. 307.)

**SPECIAL EXPENSES** are those which benefit a particular contributory place, e.g. expenses relating to property held on trust solely for the benefit of that contributory place. A Special Rate is levied on the contributing places which benefit thereby. Power is given under Sect. 308 of the Public Health Act, 1936, to the Rural District Council to contribute out of the General Rate such an amount as they consider advisable towards Special expenses.

**Private Improvement Rate.** Any district, whether urban or rural, may levy and collect a Private Improvement Rate. This is a rate imposed under Sect. 157 of the Public Health Act, 1875, or under the Private Street Works Act, 1892, upon the occupier or owner of premises for whose benefit the expenses which the rate is designed to meet have been specially incurred. Such an expense may be in respect of sewers, drains, water supply, paving or similar works. Such expenses may be made repayable within a period of years not exceeding thirty, the rate of interest being fixed by Order of the Minister.

Under the Public Health Act, 1936, expenses recoverable from owners are made a charge on the premises. Repayment may be

spread over thirty years. The rate of interest is fixed by the Council but the Minister of Health is authorized to fix a maximum rate by Order. (Sect. 291.)

## LOANS

Loans for sanitary works of a permanent character may be raised, repayable within a period not exceeding 60 years. Any local authority possessed of any land works or other property for the purpose of disposal of sewage, may borrow any money on the credit of such land works or other property repayable within 30 years. (Public Health Act, 1936, Sect. 310.) Loans for land for housing schemes and allotments may be repaid within a period not exceeding 80 years. The prior limit on the total outstanding loans was removed by the Local Government Act, 1929.

## ACCOUNTS

Accounts are made up yearly to the 31st March, in accordance with the provisions of Part X of the Local Government Act, 1933. The accounts of all District Councils are audited by the District Auditor of the Ministry of Health.

## FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

**Part I. Functions of Local Authorities.** (a) **DISTRIBUTION OF CERTAIN FUNCTIONS BETWEEN LOCAL AUTHORITIES.** 1. *By-laws for Good Rule and Government.* The making of by-laws outside boroughs should be left to the County Councils, but Urban and Rural District Councils should have the right to appeal to the Secretary of State against a refusal on the part of the County Council to make such by-laws and should have concurrent powers to enforce the by-laws.

2. *Appointment of Gas Examiners.* Rural District Councils should have the same powers with regard to the appointment of gas examiners as are possessed by Borough and Urban District Councils under the Gas Regulation Act, 1920.

(b) **OTHER QUESTIONS AFFECTING POWERS AND DUTIES OF LOCAL AUTHORITIES.** 1. *Assimilation of Powers of Urban and Rural District Councils.* The assimilation of powers of Urban and Rural District Councils should consist primarily in the conferment on Rural District Councils of certain powers, as distinct from duties, of Urban District Councils, but provision should be made for an appeal to the Courts against the exercise of any powers imposing upon individuals obligations which might be unreasonable in a rural area.



Subject to these reservations, the Commissioners set out a list indicating the kind of powers which might be conferred generally on Rural District Councils, and they recommended that provision should be made accordingly. This has been accomplished under the Rural District Councils (Urban Powers) Order, 1931, and most of the functions have now become powers of Rural District Councils under the provisions of the Public Health Act, 1936.

2. Such urban powers as it may be deemed expedient to entrust to Rural District Councils should be conferred upon them generally, by statute, without the necessity for the procedure of formal adoption or application to the central department for the issue of an order. Rural District Councils should be enabled to put any such powers into operation in regard to any defined area in their district, and to charge the expenses as special expenses in proper cases.

3. The development of the parochial committee system would facilitate the exercise of urban power in rural districts, and would remove many difficulties which now occur in administration.

**Part II. Matters Relating to the Constitution of Local Authorities.** 1. *Constitution of Electoral Divisions of Counties.* The Council of any County District within a County, aggrieved by a refusal of the County Council to make a representation to the Secretary of State in favour of an alteration of the boundary of any electoral division of the County or of the number of County Councillors and electoral divisions, or dissatisfied with any alteration proposed by the County Council, shall have a right of appeal to the Secretary of State who shall, if either party so requests, hold an inquiry and may make an order under Sect. 54 of the Local Government Act, 1888. (Now Sect. 10 of the Local Government Act, 1933.) So far as relates to Urban District Councils, this has been carried into effect under the Local Government Act, 1933, Sect. 37 (5).

2. *Date of Urban District Council Elections.* The elections for Urban District Councils and the elections for Borough Councils should be held at the same time, but action on this recommendation should be delayed until after the first general review of county districts under the Local Government Act, 1929, Sect. 46.

3. *Appointment of Chairmen of Urban District Councils.* The appointment of chairmen of Urban District Councils should be regulated by provisions similar to those contained in Sect. 15 (3) of the Municipal Corporations Act, 1882, under which a chairman remains in office until his successor is appointed. (Now Sect. 33 (3) of the Local Government Act, 1933.)

4. *Grants to Chairmen of Urban and Rural District Councils.* The provisions of Sect. 15 (4) of the Municipal Corporations Act,

1882 (now Sect. 18 (4) of the Local Government Act, 1933), should be extended so as to enable an Urban District Council to grant an allowance to the chairman of the Council, and the same power might be conferred on a Rural District Council.

#### SCOTLAND AND IRELAND

There were no Urban or Rural District Councils in Scotland until the Local Government (Scotland) Act, 1929, constituted District Councils. Urban and Rural District Councils exist in Northern Ireland as in England and Wales.

## CHAPTER IX

### THE BOROUGH COUNCIL

THE Borough Council, as at present constituted, is probably the oldest Local Government authority. The development of craftsmanship gave rise to the growth of towns, or compact centres of population, engaged mainly in industrial pursuits, though their inhabitants also carried on the primary and indispensable work of cattle-rearing and agriculture as by-industries. After this it was found that the gathering together of the "gilds" in the towns resulted in a new social development, viz. the city or self-governing municipality—the borough in the modern English sense.

### HISTORY OF THE BOROUGH

Long before the Norman Conquest traces are found of the "burh," or fenced homestead, from which both the character and the name of the modern borough are derived. Thus, while the "tun," or the village, was the hedged or stockaded place, the "burh" was the strong or fortified place.

Facilities for the exchange of goods often led in Anglo-Saxon times to the development of the borough. Thus, there was granted to the "burh" exemption from the jurisdiction of the Hundred court in Norman times, but the servile taint clung around the ancient cities, which preserved their historic unity at the cost of tallage (a stigma of serfdom), which could be levied by the lord as often as he wished. Naturally, the burgesses endeavoured to escape this liability to indefinite tallage by agreeing to pay a fixed sum annually. Very often such a payment and any other privileges obtained from over-lord or king would be solemnly recorded in a Charter, which was simply a parchment scroll, in which, in return for the annual payment, the King or lord granted the borough freedom from all other claims and the uses of certain privileges of unreclaimed serfs in a borough, carefully specified in the Charter. Thus, for example, the Charter which Welshpool borough received in 1406 from the feudal lord of the manor, confirmed and extended the privileges of the borough's first Charter, obtained in 1263 from a Prince of Powis.

In this manner the country became dotted with chartered towns, for there was no uniform principle in their development. The general policy of the Crown was to strengthen the towns as a counterpoise to the power of the nobles, and gradually to secure the exclusion of the local lord. Trade gilds also acquired

important powers over town matters. The Restoration resulted in an attack on the power of boroughs, and as a result of Judge Jeffreys's tour the boroughs became centres of elaborate corruption, and the "freedom of the borough" was synonymous with political corruption.

The Industrial Revolution of the eighteenth century, with the introduction of machinery, steam, and factories, resulted in the concentration of population in towns. Urban areas sprang up with no local amenities and no provision for securing them, e.g. Birmingham had no town government, no charter, merely a fragmentary manorial organization. Some of the work was done by voluntary associations, e.g. night patrols, etc.

The political abuses which were swept away by the Reform Act of 1832 resulted in the appointment of a Royal Commission in 1833, and its report constituted the basis of the Municipal Corporations Act, 1835, the great charter of English municipal liberty. About fifty amending Acts were passed between 1835 and 1882, and were codified in the Municipal Corporations Act, 1882, which, together with its various amendments, has been largely superseded by the Local Government Act, 1933.

The Parliamentary Borough is now merely an electoral division, and is in no way connected with municipal matters, except that the municipal organization is used for the administration connected with parliamentary elections. The parliamentary and municipal franchises necessitate separate provision in the registers of electors. It should be noted that the Representation of the People Act, 1918, has done much to reconcile the boundaries, and there is now a closer relation than formerly between the two areas.

## ESTABLISHMENT OF A BOROUGH

A Municipal Corporation is constituted by the grant of a Charter of Incorporation. The Charter can be granted only after a petition to His Majesty in Council, by the Council of an urban or rural district praying for the grant of a municipal charter of incorporation. The resolution to petition must be passed by a majority of the whole Council at a special meeting and confirmed by a similar majority at a further meeting not earlier than one month after the passing of the resolution. The procedure in connection with the granting of a Charter is to be found in the Local Government Act, 1933, Sects. 129 to 138.

The petitioners advise the Ministry of Health and the County Council of the petition. It is not necessary for a town to have a minimum population nor even a certain rateable value before

applying for a Charter of Incorporation. In practice, a population of 20,000 is usually required. The necessity for new municipalities is caused by the very great increase in urban population and the desire for more self-government. The King refers the petition to the Privy Council, who appoint a small committee from its number to report. The Minister of Health instructs an Inspector, who holds a local inquiry, at which the scheme for the creation of the new borough is presented and examined. At the inquiry evidence is taken, both for and against the scheme. Should the Inspector report unfavourably, the movement must lapse until a more favourable opportunity presents itself. Should the Inspector report favourably upon the petition, the petitioners draft a scheme for incorporating the new borough, which is submitted to the Privy Council. Notice of the scheme is published in the *London Gazette*, and one or more local newspapers, and a copy deposited at the offices of the petitioning Council. If unopposed during one month, either the scheme may be submitted for confirmation to Parliament, or an Order in Council is issued granting the Charter and prescribing the boundaries of the borough, the number of councillors, and other similar matters. Within the month, opposition may be lodged either by any public body or by one-twentieth of the electors of the town. In such an event an Act of Parliament is necessary before the borough can be created.

On the creation of a borough, the financial adjustments falling to be made are provided for by the Local Government Act, 1933, Sect. 132.

## ADVANTAGES AND DISADVANTAGES OF MUNICIPAL GOVERNMENT

**Advantages Claimed.** (1) IMPROVED STATUS. In relation with other authorities, and with the Central Departments of State, the Borough carries added status; and its opinions and requirements are more respected than those of a District Council. Moreover, a more progressive policy can be adopted with the relaxation of Central Control, when a District Council is elevated to the status of a Borough.

(2) ADDED DIGNITY OF MAYOR. A Borough possesses the added dignity of a Mayor, who may be paid a salary in keeping with this position, and is a Justice of the Peace for two years.

(3) ALDERMANIC BENCH. The creation of an aldermanic bench tends towards a stability of function and a continuity of policy. They are elected by the councillors, who themselves have been chosen as the mouthpiece of the electors. It extends

the privilege of membership of the Council to men and women of proved ability who would not be prepared to go to election. For the period of their office they do not differ from ordinary councillors, except where a borough is divided into wards an alderman acts as returning officer.

(4) COUNCILLORS. A dignified authority like a Borough Council will attract to its personnel a better type of candidate than is usually found in District Councils. Men and women with a greater sense of responsibility, and with a greater experience in affairs generally, are more willing to offer themselves for election in the case of a Borough Council.

(5) ARMS. The right to adopt a coat-of-arms becomes the privilege of a Borough.

(6) FREEMEN. The Freemen of a Borough are created by the Charter, but the Borough Council reserves the right to appoint Honorary Freemen as a mark of appreciation for services rendered to the Borough or the State.

(7) BY-LAWS. The Borough may frame their own by-laws for the good rule and government of the whole, e.g. in respect of street trading obstructions, street nuisances, etc.

(8) MAGISTRATES. The Borough may be granted, on petition to the King, a separate Commission of the Peace with the consequent bench of borough magistrates; and also, to appoint a Stipendiary Magistrate, without reference to population.

(9) AUDIT. The Borough may dispense with the services of the District Auditor for many purposes, and may rely upon the Borough Auditors or professional auditors appointed for the purpose.

(10) ADMINISTRATION. The Borough attracts a better type of official than is the case with the District Councils, which means that economies are made and considerable improvement obtained in the administration of the Borough.

(11) COUNTY BOROUGH STATUS. The Charter of incorporation is a step towards becoming a county borough with freedom from county council administration and control, including the possession of its own police force when its population reaches 100,000.

**Disadvantages Urged.** (1) STATUS AND CONSEQUENT CEREMONIAL. The added status of the newly-elected Borough carries with it additional ceremonial which is considered to be not only unnecessary but expensive, and of little use to the Borough as an administrative body. For example, the increase in attendants on the Mayor, liveries, cars, etc.

(2) THE MAYOR. The Office of Mayor demands a greater hospitality on the part of that official, and a greater demand

upon his time to fulfil the increased duties, all of which mean expense.

(3) **ALDERMANIC BENCH.** The aldermanic system is considered undemocratic in view of the fact that the Aldermen are elected by the councillors and not by the electorate. They are elected for a period of six years which may put them out of complete touch with the changing conditions as would be reflected at the polls. The election may also be arranged to fill a depleted party bench, and would thus be in direct conflict with the opinion of the electors as reflected at the polls.

(4) **AUDIT.** The powers of abolishing the district audit of the Ministry of Health may be wrongly used. It is considered a good thing that the accounts should be open to disallowance and surcharge by the District Auditor.

(5) **INCREASE OF RATES.** An increase in rates can be expected by the additional cost incurred for the ceremonial purposes and newly acquired duties, etc.

(6) **ISOLATION.** With the lost interest in many County affairs the Borough loses a point of contact with the authorities, which in the past operated for their good, and it tends to become exclusive and isolated. Upon grant of county borough status the isolation is practically complete.

## CONSTITUTION OF A BOROUGH

A borough is governed by a Municipal Corporation, which enjoys perpetual succession and a common seal. The root idea of a Corporation is that it is a body of individuals acting together for a common purpose, and having a legal existence apart from the individual legal existence of its members.

A common law corporation may in law do anything that a natural person may do. (*Case of Sutton's Hospital*, 1612, 10 Co. Rep. 1a; 77 E.R. 937 Ex. Ch.) But the difference between a statutory corporation and a corporation incorporated by Royal Charter is well settled. The former can do such acts only as are authorized directly or indirectly by the statute creating it; the latter (speaking generally) can do everything that an ordinary individual can do. (*Attorney-General v. Manchester Corporation*, [1906] 1 Ch. 643.)

A Municipal Corporation means the body corporate constituted by the incorporation of the inhabitants of a borough. (Local Government Act, 1933, Sect. 305.) It consists of the mayor, aldermen, and burgesses. If a city, the designation is the mayor, aldermen, and citizens thereof; and, if the city has a Lord Mayor, he is so designated in the title.

A **BURGESS** is a person enrolled upon the Local Government

register of electors for the borough, and is now known as a Local Government elector.

The privileges of a burgess include the right to vote at elections for borough councillors and elective auditors, if any. In a non-county borough he also votes for members of the County Council.

The duties of a burgess include serving upon juries.

## COUNCIL

The Municipal Corporation is capable of acting by the council of the borough, consisting of the mayor, aldermen, and councillors. (Local Government Act, 1933, Sect. 17.)

COUNCILLORS are elected by ballot for three years on 1st November, in the year of election, by Local Government electors of the borough. (Local Government Act, 1933, Sect. 23.)

*Qualifications and Disqualifications* for being a member of a borough council are the same as those for any other local authority (Local Government Act, 1933, Sects. 57 and 59). (See Chapter VI.)

The number of borough councillors is fixed by the Charter and may be altered by the same procedure as that by which the wards of a borough may be altered under the existing law, viz. by an Order in Council in the case of a municipal borough, and by an Order of the Secretary of State in the case of a metropolitan borough. There are usually three councillors to each ward, and usually one of them retires annually. The election is conducted in accordance with the Second Schedule to the Local Government Act, 1933.

THE MAYOR is elected on the 9th November by the councillors and *non-retiring* aldermen from among the council, or from persons qualified for election as councillors. Election is for one year. The mayor may receive a salary, and may be re-elected. In certain cities the mayor possesses the title of "Lord Mayor." By virtue of his office, the mayor is chairman of all meetings of the council. He is Chief Magistrate for his year of office, and for one year afterwards he is a Justice of the Peace for the borough, unless disqualified. If the borough does not possess a separate Commission of the Peace, then the mayor is a Justice of the Peace for the county. Where there is a separate borough police force, the mayor is also a member of the Watch Committee, which controls the force. (Local Government Act, 1933, Sect. 18.) The mayor may appoint, in writing, a member of the council to act as deputy-mayor. (*Ibid.*, Sect. 20.)

ALDERMEN are elected by the *councillors* from among the councillors or persons qualified to be councillors, and hold office for six years. (Local Government Act, 1933, Sect. 21.) Election



is on the 9th November in every third year and is conducted by open voting papers handed in to the person presiding at the meeting of the council, who shall openly produce and read them. (See *Barnes Corporation Case*, [1933] 1 K.B. 668.) One-half of the aldermen retire every three years. The number is one-third the number of councillors. (*Ibid.*, Sect. 21 (2).) In the case of an equality of votes the person presiding at the meeting, whether or not entitled to vote in the first instance, shall have a casting vote. (*Ibid.*, Sect. 22 (5) and Third Sch., Part V, par. 1 (2).) A mayor, who is also an alderman, is entitled to vote at an election of aldermen of a borough. (County Borough of Gateshead Election Petition, *Re Burdon v. Baron* (1939), 2 All E.R. 525.) The only additional function of an alderman is that, in the case of a borough divided into wards, he is required to act as returning officer at the election of councillors for the ward to which he has been assigned by the council.

**Meetings.** The Borough Council must hold an annual meeting and at least three other meetings, which must be, as near as may be, at regular intervals. The annual meeting must be held on the 9th November at 12 noon. Other meetings may be summoned by the mayor, or by any five members or one-fourth the number of the council, whichever is least. The quorum is one-third of the whole council.

**Committees.** The work of a Borough Council is principally transacted by committees. The council may appoint committees for any purpose, and membership is not confined to members of the council, except that the appointed members must not exceed one-third of the total. These appointed members are persons of special knowledge and experience in the subject administered by the committee. The power to raise a loan or levy a rate or issue a precept, cannot be delegated to a committee. Some committees are compulsory, as in the case, if any, of a Watch, Education, Maternity and Child Welfare, Old Age Pensions, and Public Assistance (county boroughs only). No provision is made as to term of office of members of the committees, except that it shall be fixed by the council.

## POWERS AND DUTIES

A statutory corporation may do only those things which are necessary for carrying out the purposes for which it was incorporated. (*Ashbury Railway Carriage Co. v. Riche*, 1875, L.R. 7 H.L. 653.)

The powers and duties of the Borough Council may be classified as follows—

1. As a municipality under the Municipal Corporations Act,

1882, and its amendments, now principally the Local Government Act, 1933.

2. As an Urban Public Health Authority possessing the powers and duties described in Chapters XII, XIII, XIV, and XVIII.

3. As an authority under the Adoptive Acts, as described in Chapter XV, it may undertake functions for the moral and social improvement of the inhabitants of the borough.

4. The management of trading enterprises, as described in Chapter XVI, constitutes also an important part of the work of many municipalities.

5. A Borough Council is also the authority to undertake the care of Ancient Monuments and additional functions prescribed by general Acts of Parliament, e.g. the Shops Acts, 1912 to 1934, and the Inebriates Act, 1898.

6. Certain functions devolve upon boroughs upon attaining the requisite population as described upon page 191.

7. In addition, many borough councils obtain powers under local Acts of Parliament to undertake functions which are not possessed, in the first instance, by other local authorities, e.g. Birmingham Savings Bank.

As a municipality it is responsible for the acquisition and management of the Corporate Estate. It makes provision for the administration of justice in cases where the borough possesses a separate commission of the peace, court of quarter sessions, a stipendiary magistrate, or a local court of record. Borough Councils can also make by-laws for the good rule and government of the borough. The work under the Children and Young Persons Acts (as to Approved Schools), and other Acts is administered in certain instances by the Borough Council.

It has been held that a member of the corporation may sue to restrain the corporation by injunction whenever it contemplates an act which might result in the forfeiture of the charter. (*Jenkin v. Pharmaceutical Society of Great Britain*, [1921] 1 Ch. 392.)

## OFFICERS

The Officers include the Town Clerk, who has always been considered the principal officer of a municipal corporation. A solicitor or barrister is usually appointed, although it is not required by statute that the town clerk should be thus qualified. (See the Hadow Committee Report, page 25.)

The Town Clerk holds office at the pleasure of the council and receives the salary agreed upon between the parties. (Local Government Act, 1933, Sect. 121.) The council may appoint a deputy town clerk, and in the event of the death or resignation of the town clerk and there being no deputy, the mayor is required

to nominate in writing a suitable person to act until the office is again filled.

The Treasurer, who must not be the town clerk, is usually a full-time officer, and in certain boroughs where he is not, the manager of a local bank is sometimes appointed. The clerk and treasurer must not be business partners. The appointment of Town Clerk and Treasurer should be under seal.

The usual officers required by an Urban Sanitary Authority as described in Chapter VIII are also appointed, and such other officers as the council thinks necessary.

## BOROUGH FINANCE

The receipts of a borough are obtained by tolls, dues, fees, rents, etc., improvements to private property, receipts from municipal undertakings, such as gas, water, tramways, etc., and Exchequer contributions.

**The Borough Rate.** Prior to the passing of the Rating and Valuation Act, 1925, described in Chapter XXVIII, a Borough Rate was levied to meet any deficiency on the borough fund, including the requirements for education, in addition to the General District Rate for public health purposes.

All income must now be paid into the Borough (now General Rate) Fund, and may be paid out only with statutory authority. (*Attorney-General v. Newcastle Corporation*, 1889, 23 Q.B. 492.)

Certain progressive towns had promoted legislation to authorize the collection of one Consolidated Rate for requirements on the one demand note. In other cases consolidation of collection of all rates had been arranged by co-operation with the Overseers. Under Sect. 2 (1) of the Rating and Valuation Act, 1925, this reform was extended to all areas and one General Rate is now collected by all rating authorities, as described in Chapter XXVIII.

The Corporation may use any surplus of its General Rate Fund for the public benefit of the inhabitants and the improvement of the borough but may not levy a rate to create a surplus. (*A.-G. v. Newcastle Corporation*, [1892] A.C. 568.)

Loans may be raised for borough purposes to meet special expenditure upon works of a permanent character, as described in Chapter XXVII: Borrowing Powers of Local Authorities. They must be repaid within a period not exceeding sixty years, in accordance with Sect. 198 of the Local Government Act, 1933. Other loans may be raised and repaid as prescribed by the respective enactments and the Eighth Schedule to the Local Government Act, 1933. Thus loans under the Tramways Act, 1870, must be repaid in thirty years; and loans for the purchase of land under

the Housing Acts and the Small Holdings and Allotments Acts in eighty years. Money may be raised by the issue of Stock under Part IX of the Local Government Act, 1933, and under local Acts.

**Accounts.** The council of a borough may adopt the system of district audit by the Ministry of Health, in which case the procedure laid down for the district audit applies to the preparation and publication of accounts. Where the accounts are not subject to district audit, the accounts must be made up yearly to the 31st March, or such other date as the council, with the approval of the Minister of Health, may decide.

After the audit of the accounts, an abstract of the accounts must be published yearly, and must be purchasable at a reasonable price. Within one month after the completion of the audit, the town clerk must make a yearly return of the income and expenditure, certified by the treasurer, to the Ministry of Health. A fine not exceeding £20 may be imposed for failure to make this return.

**Audit.** Accounts not subject to district audit are audited, unless there are provisions to the contrary, by the Borough Auditors, i.e. two elective auditors elected by the burgesses, normally on 1st March, from among persons qualified to be, but not being, members of the council; together with the mayor's auditor, who is a member of the council nominated by the mayor. Borough Auditors have no power of disallowance or surcharge.

This system of audit does not apply to the Education, Probation of Offenders, Rating, Motor Tax, and the Public Assistance Accounts, all of which are audited by the District Auditor of the Ministry of Health.

The Local Government Act, 1933, Sect. 239, enables a municipal corporation, instead of having its accounts audited by Borough Auditors, to provide, by passing the necessary resolution in the manner prescribed, for the accounts being audited either by District Auditors of the Ministry of Health or by one or more professional auditors appointed in accordance with the Act. The system of professional audit necessitates the appointment under seal of a member of one of the professional accountant bodies named in the Section. The system of audit is further described in Chapter XXIX.

## SPECIAL TYPES OF BOROUGHES

Special types of boroughs include (a) boroughs possessing judicial functions; (b) boroughs possessing special functions according to population; and (c) cities and towns which, by ancient privilege, are counties in themselves; (d) county boroughs.

## (a) Boroughs Possessing Judicial Functions.

(i) Most boroughs now have a *separate Commission of the Peace*, which is a grant by the Crown, at which the Borough Magistrates preside. Two or more magistrates acting together constitute a Court of Summary Jurisdiction. Such boroughs must appoint a *Clerk to the Borough Justices*. He is generally, but not necessarily, a barrister or solicitor, and the Justices, when judging difficult cases, depend very largely upon his advice. Every borough with a separate Commission of the Peace is a separate licensing division for liquor licences.

(ii) A salaried magistrate, called a *Stipendiary Magistrate*, may be appointed in any municipal borough which has a separate Commission of the Peace (Municipal Corporations Act, 1882, Sect. 161). The method of appointment is described in the following chapter.

(iii) Boroughs having a *separate Court of Quarter Sessions* possess a salaried Recorder. He is appointed by the Crown from barristers of five years' standing, and holds office during good behaviour. The Court of Quarter Sessions is not held by the Justices as in a county, except for licensing, but by the Recorder acting as sole judge. Such boroughs also have a Clerk of the Peace.

(iv) A borough having a separate Court of Quarter Sessions (except it had a population of less than 10,000 in 1881, or is a borough receiving a separate Court of Quarter Sessions since August, 1888) has a *Coroner*. He must be a fit person appointed by the Council in accordance with the Municipal Corporations Act, 1882, Sect. 171. The Coroner must appoint a deputy. The Coroners Act, 1921, which defines qualifications for future coroners and deputies, enables local authorities which appoint coroners to revise the rate of remuneration, having regard to the increase in the cost of living and travelling expenses, etc. The Coroners (Amendment) Act, 1926, provides that after 1st May, 1927, only barristers, solicitors, or legally qualified medical practitioners, of not less than five years' standing, shall be qualified to be appointed county or borough coroners, or deputy, or assistant-deputy county or borough coroners.

(v) Certain boroughs have also *Courts of Civil Jurisdiction*, which are survivals of ancient institutions. Such are the Tolzey Court of Bristol, the Salford Court of Record, and the Liverpool Court of Passage. Unless there is a local Act of Parliament to the contrary, the Recorder of the borough acts as judge. The Court, in at least one instance, possesses powers

equivalent to those of the High Court of Justice, within its area of jurisdiction.

**(b) Boroughs Possessing Special Functions According to Population.**

(i) Where there is a population of 10,000 *inhabitants or over*, the Borough Council is the authority under the Diseases of Animals and Destructive Insects and Pests Acts, and appoints a committee under the Allotments Act, 1922. Such a borough is responsible for the Regulation of Advertisements.

(ii) Where a 10,000 population borough is also a Quarter Sessions Borough it becomes the authority under Acts relating to weights and measures, and explosives.

(iii) Where there is a population of 20,000 *inhabitants or over*, the Borough Council is the Local Pension Authority under the Old Age Pensions Acts. Such a borough may apply to the Home Secretary for a separate police force. It is a separate area under the Sea Fisheries Districts Acts.

(iv) Where there is a population of 50,000 *inhabitants and over*, the Borough Council has power to appoint a Local Committee under the Naval and Military War Pensions, etc., Acts, 1915 to 1917, as well as representatives on Territorial Associations under the Territorial and Reserve Forces Act, 1907.

(v) Where the population is 40,000, the borough is the local authority under the Food and Drugs Act, 1938.

(vi) Where the population is 60,000, according to the 1931 census, or there are not less than 7,000 elementary school pupils, the borough may claim exemption from the scheme of the county council and as a Divisional Educational Executive prepare their own scheme of delegation in respect of primary and secondary education and, in special circumstances, further education. (Education Act, 1944.)

**(c) Boroughs which are Counties in Themselves.** Certain cities and towns, by ancient privilege, are counties in themselves, such as those possessing a separate Commission of the Peace, Court of Quarter Sessions, and a High Sheriff. The High Sheriff is appointed on 9th November each year, and acts independently of the High Sheriff for the county.

## COUNTY BOROUGHS

**(d)** This type of borough was created under the provisions of the Local Government Act, 1888. Sixty-one County Boroughs are named in the Schedule to that Act, and they consisted, with few exceptions, of boroughs with a minimum population of 50,000, and this continued until 1926, when, under the Local

Government (County Boroughs and Adjustments) Act, 1926, now Local Government Act, 1933, the minimum population was increased to 75,000. The Local Government (Boundary Commission) Act, 1945, increases the figure of 75,000 to 100,000. The Act also prohibits the creation of any new county boroughs for the county of Middlesex. There are now 83 county boroughs.

County boroughs are almost entirely exempt from the jurisdiction of the county council in which they are situate, and possess nearly all the powers of a county council. These powers include all forms of housing (including rural workers), education, public assistance, maternity and child welfare, appointment and supervision of midwives, maintenance of all roads and bridges, mental treatment, welfare of the blind, tuberculosis, venereal diseases, small holdings, registration and licensing, and separate apportionment of the General Exchequer Contribution. It should be observed that county borough status does not automatically confer powers for the establishment of a separate police force for the borough, although a population of 100,000 is required for the appointment of a separate force, nor does it impose any additional duties with regard to the register of voters. A county borough will be the authority for the compilation of the register only if it is also a parliamentary borough. Where a separate police force is established the council is the local authority in respect of Milk and Dairies Orders.

In some counties, where there are two or three county boroughs, a heavy financial drain falls on the few towns in the county which have to find most of the county council's expenses. For example, in East Sussex there are three county boroughs, viz. Brighton, Hastings and Eastbourne, so that the burden of the county rate falls mostly on the towns of Hove and Bexhill, Hove having to raise about two-thirds of the entire county rate. This is a difficulty that has yet to be surmounted. It should be observed, however, that the financial responsibility for the services in the county borough are transferred from the county council to the county borough council and a financial adjustment is made between the two authorities.

**Extension of County Boroughs.** County councils have consistently objected to the establishment of new county boroughs and the extension of the boundaries of existing county boroughs. In February, 1923, the King appointed a Royal Commission on Local Government under the chairmanship of the Earl of Onslow. The terms of reference were "to inquire as to the existing law and procedure relating to the extensions of County Boroughs and the creation of new County Boroughs in England and Wales, and the effect of such extensions or creation on the administra-

tion of the Councils of Counties and of Non-County Boroughs, Urban Districts, and Rural Districts; to investigate the relations between these several Local Authorities; and generally to make recommendations as to their constitution, areas, and functions."

The first report of the Royal Commission was issued on the 16th September, 1925. The Commissioners recommended that all proposals for the constitution of county boroughs should be made by private Bill. Proposals for the extension of county boroughs should be made by private Bill unless, in any case, the County Borough Council concerned wished to proceed by application for a provisional order, and no other local authority concerned objected to this procedure. The Commission recommended that the population of a borough that should in future entitle the town council to promote a private Bill for the constitution of the borough into a county borough should be 75,000.

The Commissioners considered that the fact that a town planning scheme extends over the area of the county borough, and over the whole or part of any proposed added area, should not be considered as being of serious importance in the determination of the question whether the proposal to extend the boundaries of the borough is desirable. Legislative effect was given to certain of their recommendations in the Local Government (County Boroughs and Adjustments) Act, 1926.

The law on the subject was consolidated in Sects, 139, 140, and 255 of the Local Government Act, 1933. The Local Government (Boundary Commission) Act, 1945, provided that an application to the Commission for county borough status from a borough with a population of less than 100,000 must receive consideration as to whether the application is desirable. The Commission may reduce the status of a county borough to that of a non-county borough but have no power to deprive a borough of its charter, or to create a new borough. An order relating to a county borough is provisional only and requires confirmation by Parliament.

An important judgment was given in *Oxford City Council v. Oxfordshire County Council* ([1939] A.C. 48). By the Oxford Extension Act, 1928, certain areas, profitable from a rating authority's point of view, were transferred from the respondents (the county council) to the appellants. By the Local Government Act, 1929, liability to repair roads was in certain cases transferred to county councils. The respondents claimed that this involved them in a loss which was a result of the Oxford Extension Act, 1928, and for which they were entitled to be compensated by the appellants, by reason of the Local Government (Adjustments) Act, 1913. The Oxford Extension



Act, 1928, came into force four days after the Local Government Act, 1929, received the Royal Assent; but the Act of 1929 did not come into force until a year later. It was held that as the language of Sect. 1 of the Act of 1913 could not be fitted to the facts of the present case, there being no increase of an existing burden in consequence of the alteration of boundaries, the respondent county council were not entitled to receive compensation for the loss sustained.

**City.** A city is a special type of borough which usually has a cathedral and a bishop, upon which the King has conferred the dignity of a city. This qualification is not absolutely necessary, as the King, being the Fountain of Honour, may confer such dignity upon any borough. A city is usually created by granting Royal Letters Patent. It does not add any functions to or improve the status as a local government unit of the borough.

**Freemen.** Freemen are persons entitled to be admitted in respect of birth, marriage, or servitude, and who are admitted by the mayor and enrolled by the town clerk on the Freemen's Roll. They have now lost all place in municipal government. They still have, in some instances, however, certain rights in a share of corporate property and municipal charities which existed prior to the reforms of 1835. No person may be admitted a freeman by gift or purchase.

**Honorary Freemen** are persons of distinction who have been admitted to the Freedom of the Borough in accordance with the Honorary Freedom of Boroughs Act, 1885, now Local Government Act, 1933, Part XIV. A resolution passed by not less than two-thirds of a specially convened Council Meeting is now necessary to admit new honorary freemen. As freemen they possess no qualifications to become burgesses; nor do freemen by birth, marriage, or servitude.

## FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

### Part I. Functions of Local Authorities

#### OTHER QUESTIONS AFFECTING POWERS AND DUTIES OF LOCAL AUTHORITIES

*Meetings of Electors and Polls under the Borough Funds Acts.* The requirements of the Borough Funds Acts in regard to towns' meetings and polls of electors should be repealed. The Acts were repealed by the Eleventh Schedule to the Local Government Act, 1933, but the recommendation has not yet been provided for, as

the procedure is continued in Part XIII of the Local Government Act, 1933.

## Part II. Matters Relating to the Constitution of Local Authorities.

I. CREATION OF BOROUGH. The Commissioners were disposed to deprecate the abolition of procedure by Charter. But the retention of the Charter system should be accompanied by measures designed to ensure more effectively that the grant of a Charter is made to depend primarily upon the merits of the area as an efficient local government unit. The following modifications should accordingly be made in the existing law and practice—

(i) Whilst, in view of the exceptional cases which may require special consideration, the Commissioners do not propose that power to apply for a charter should be limited by statute to authorities with a certain population, they are of the opinion that as a rule of practice a minimum population of 20,000 should normally be a condition precedent to the submission of a petition for a charter.

(ii) In lieu of a petition signed by a majority of the inhabitant householders, the petition should be made by the local authority. The proposal to submit such a petition should require an absolute majority of the whole number of the council at a special meeting convened after due notice, and should be confirmed at a further special meeting, again by an absolute majority. This is provided for in Sect. 129 of the Local Government Act, 1933.

(iii) In determining what advice should be tendered to the King in regard to the exercise of the prerogative in the grant of a charter, the committee of the Privy Council should have regard primarily to the report of the Minister of Health, upon the efficiency of administration and financial capacity of the area in question, and any local inquiry into a petition should accordingly be held by an inspector of the Ministry of Health. (See page 136.)

## 2. VOID BY-ELECTIONS OF TOWN AND COUNTY COUNCILLORS.

(i) The period of fourteen days specified under Sect. 66 of the Municipal Corporations Act, 1882, is too short a period for the filling of a vacancy on a Town Council or a County Council, especially in the rural electoral divisions of a county. The time-table should, therefore, be amended as follows—

(a) Within one week of notification of a vacancy the returning officer should publish notice of election;

(b) Nominations within fourteen days after notice; and

(c) Election seven days after nominations.

Thus the whole procedure would occupy one month. This is provided for in the Second Schedule to the Local Government Act, 1933.

(ii) Provision should be made to enable a Town Council or a County Council themselves to make an order for a new election in the event of a void by-election occurring. (This is provided for in the Local Government Act, 1933, Sect. 72.)

## CHAPTER X

### THE JUSTICE OF THE PEACE

THE office of Justice of the Peace is one of great antiquity, dating from the time of the origin of the "King's Peace," which the Justice is commissioned to preserve. When he was first appointed, he was solely an executive officer and by later legislation he has had considerable judicial functions assigned to him.

The Justice of the Peace is appointed by the Crown, the right of appointment being exercised by the Lord Chancellor, except in the County Palatine of Lancaster, where it is exercised by the Chancellor of the Duchy of Lancaster. Appointments to the County Commissions of the Peace are made upon the recommendation of the Lord-Lieutenant of the County. Certain cities and boroughs possess separate Commissions of the Peace, as explained in the previous chapter.

Local Advisory Committees have been set up since 1905, for the purpose of assisting and advising the Lords-Lieutenant in their recommendations for the County Commissions, and the Lord Chancellor and the Chancellor of the Duchy in the case of appointments to City and Borough Commissions.

These committees consist of representative public men and women drawn from all political parties within the County, City, or Borough.

The Lord Chancellor and the Chancellor of the Duchy are not bound to accept the recommendations of the Lords-Lieutenant or of the City and Borough Advisory Committees. They may themselves appoint justices without any recommendation, and equally they have power to remove names from the Commission.

The general principles observed in the appointment of justices are contained in the recommendations of the Royal Commission upon the Selection of Justices of the Peace (1911).

### QUALIFICATIONS

Justices of the Peace are unpaid. Appointment is for life, so long as they retain the necessary qualifications, or are not removed for misconduct.

While acting as such, Justices of the Peace must reside in, or within seven miles of, the district in which they have jurisdiction, or occupy a house or warehouse or other property in that district. Justices may, however, be removed by the Crown from the Commission for good cause shown.

By the Justices of the Peace Act, 1906, all property qualifications were abolished.

There are certain *ex officio* Justices, viz.—

(a) The mayor of a Borough is a Justice of the Peace for his year of office and for twelve months afterwards. The mayor of a Metropolitan Borough is a Justice of the Peace for his year of office only.

(b) The chairman of a Rural or Urban District Council is, unless personally disqualified, a Justice of the Peace for the county within which his district is situated.

(c) The chairman of a County Council is a Justice of the Peace for the county. (Local Government Act, 1933, Sect. 33 (5).)

(d) The County Court Judge under Sect. 14 of the County Courts Act, 1888, is a Justice of the Peace for the county within which his circuit is situate.

(e) The Recorder is a Justice of the Peace for the borough. (Municipal Corporations Act, 1882, Sect. 163.)

(f) The Coroner is also a Justice of the Peace for the borough or county.

The Sex Disqualification (Removal) Act, 1919, with certain provisos, removed the disqualification of a person either by sex or by marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise), and provided that a person shall not be exempted by sex or marriage from the liability to serve as a juror.

Justices of the Peace in counties, for purposes of convenience, act for the Petty Sessional Division within which they reside. This Division appears to date from 1541, when the Justices of every county were directed to divide themselves according to "Hundreds, Wapentakes, Rapes, Commotes, or Number of Towns and Villages," assigning at least two of their number to each division, and holding frequent sessions therein, in addition to their "ancient Quarter Sessions," for the whole county. The Petty Sessional Division is, primarily, a division of a judicial county made by the Justices of the Peace for that county when assembled in Quarter Sessions, and is alterable every three years. The Justices "acting in and for" a Petty Sessional Division elect their own chairman. In a Borough the mayor takes precedence over all other borough justices.

## POWERS AND DUTIES

The judicial powers of the Justices of the Peace are principally derived from the Commission of the Peace (by which they are

required to cause the Peace to be kept within the area for which they are appointed), and from a large number of Acts of Parliament—about one thousand—commencing with the Statute of Winchester, 1285. The functions of Justices of the Peace as conservators of the peace, have not been diminished so that, for the purpose of preserving the peace, the police are under the orders of the justices. (*Fisher v. Oldham Corporation*, [1930] 2 K.B. 364.)

The procedure for the examination and trial of offenders is mainly governed by the Indictable Offences Act, 1848, and the Summary Jurisdiction Acts, 1848 and 1879. These Acts have been amended in some respects by the Criminal Justice Administration Act, 1914, and the Criminal Justice Act, 1925. One Justice, sitting alone, can deal with certain minor offences, e.g. simple drunkenness, but cannot impose a greater penalty than 20s. or sentence to imprisonment for more than fourteen days. He can also hear evidence in certain serious cases and can commit the accused for trial by a jury at Assizes or Quarter Sessions. Two Justices, sitting together, form a Court of Summary Jurisdiction, and have power to deal summarily with a large number of cases, mainly criminal, but some of a civil nature, e.g. in disputes between employers and servants.

In addition to their judicial functions, Justices of the Peace have various duties relating to Local Government, including the following—

1. Control of persons possessing licences and of premises licensed for—

(a) The sale of intoxicating liquor by retail.

(b) The control of billiard playing, in accordance with the Licensing Acts.

(c) The control of music, singing, and dancing, in places where Part IV of the Public Health Acts Amendment Act, 1890, has been adopted by the local authority, and delegated by that authority to the Justices.

2. Duties under the Cinematograph Act, 1909, and the Explosives Act, 1875, where these have been delegated to the Justices by the County or Borough Council.

3. Sunday Entertainments Act, 1932. Justices may issue licences permitting Sunday opening of cinemas and impose conditions, including ear-marking of a proportion of the profits for charitable purposes and for a payment to the Cinematograph Fund. The latter is for use in the development of the cinema as a means of instruction. Public entertainment and debates on Sundays may also be licensed and special conditions attached.

4. Registration of clubs in which intoxicating liquor is supplied to members or their guests, in accordance with the Licensing Acts.

5. Duties under the Lunacy Acts, 1890 to 1922, and the Mental Deficiency Acts, 1913 to 1927, and Mental Treatment Act, 1930, viz. the certification of mental patients and issue of Orders for removal and chargeability.

6. Duties under the Volunteers Act, 1863, the Army Act, 1881, and the Military Manoeuvres Act, 1897.

7. Appointment of special constables under the Special Constables Acts.

8. Appointment of probation officers under the Probation of Offenders Act, 1907.

9. Appointment of Collecting Officer under the Affiliation Orders Act, 1914, and Sect. 30 of the Criminal Justice Administration Act, 1914. The Justices' Clerk is usually appointed.

10. Appeal against inclusion in lists of jurors in counties and in boroughs which do not possess either a separate Court of Quarter Sessions or a Borough Civil Court.

11. In counties, the appointment of one-half of the members of the Standing Joint Committee for the control of the county constabulary and the determination of matters affecting both the Justices and the County Council.

12. Appointment of Visiting Committee of prisons and mental hospitals.

13. Power to inspect weights and measures under the Weights and Measures Acts.

14. Licensing of moneylenders under the Moneylenders Act, 1927.

15. Betting and Lotteries Act, 1934.

16. The Money Payments (Justices Procedure) Act, 1935, came into operation on the 1st January, 1936. The object of the Act is to reduce the volume of imprisonment for failure to pay debts in relation to fines inflicted in courts of summary jurisdiction, and arrears under bastardy and affiliation orders and for non-payment of local rates. In default of payment there must only be committal to prison under special circumstances, such as the offender's character or the gravity of the offence. In order to enable defaulters still to carry on their employment, their term of imprisonment may be served in a police station near their residence overnight until 8 a.m.

For the effect of this Act in cases of default in payment of rates see Chapter XXVIII.

In February, 1935, the Lord Chancellor set up a Committee to inquire into the social services connected with the administration of Justice in Courts of Summary Jurisdiction.

A Stipendiary Magistrate may be appointed by the Crown on the recommendation of the Home Secretary, upon the petition of the council of a borough in accordance with the Municipal Corporations Act, 1882, Sect. 161. The council of an urban district of 25,000 inhabitants may petition the Crown for the appointment (Stipendiary Magistrates Act, 1863, Sect. 3). He must be a barrister of not less than seven years' standing. His salary is paid by the borough or urban district council which petitions for the appointment and is subject to the approval of the Home Secretary. He has the power of two Justices of the Peace (i.e. a Court of Summary Jurisdiction).

The Magistrates' Clerk is appointed by the Justices, usually, but not necessarily, from among solicitors or barristers, subject to confirmation by the Home Secretary. During the period that he holds this office, the Magistrates' Clerk is disqualified from holding certain other public offices. His duties are to assist the Justices in matters of law and practice, and to keep all the books and records required by the Summary Jurisdiction and Indictable Offences Acts. He holds his office during the pleasure of the Justices in accordance with the Justices' Clerks Act, 1877.

The salary of the Clerk and the other expenses of the Petty Sessional Division are paid by the County or Borough Council out of the County Rate or General Rate, so far as not met out of fees and fines.



## CHAPTER XI

### THE COUNTY COUNCIL

THE word "shire" appears to be Anglo-Saxon, and was originally used to signify any district or jurisdiction under the control of a special or distinctive authority, possibly with a notion of subdivision from a larger unit. Gradually, however, the word "shire" became peculiarly appropriated to the district ruled by an earl or ealdorman, or, as he was called by the Latin-writing chroniclers, the *comes* or count. Thus, before the Norman Conquest the term "county" had for the most part replaced the Anglo-Saxon term of "shire."

The area of a geographical county is split up for various purposes. Thus, for the administration of the Criminal Law the County is divided into Petty Sessional Divisions, which are grouped for certain purposes into Quarter Sessions. Local Government is administered by Parish Meetings or Parish Councils, Urban and Rural District Councils, Non-County and County Borough Councils. Some of the areas of these authorities also cut county boundaries. For purposes of Local Government, the county was governed, until 1888, by the county magistrates, who met in Quarter Sessions.

THE LOCAL GOVERNMENT ACT, 1888, had for its main purpose the transfer to the County Council, from the Justices of the Peace in Quarter Sessions, certain administrative powers which they had acquired over a period of several centuries through the administrative discretion allowed by certain statutes dating from the Tudor period. This Act was modelled upon the Municipal Corporations Act, 1882. The Bill, as introduced, did not contain provisions for empowering County Councils to promote or oppose Bills in Parliament; to issue stock; to borrow, except within very narrow limits; neither did it contain provisions with regard to the creation of county boroughs.

THE ADMINISTRATIVE COUNTY means the area for which a County Council is elected, in pursuance of Sect. 2 of the Local Government Act, 1933. This area does not include a County Borough.

England and Wales consist of fifty-two geographical counties. In most cases the administrative county coincides with the geographical county, but some geographical counties contain more than one administrative county. There are also distinctive and important districts which form separate administrative counties.

For purposes of Local Government the following are considered

separate counties: the three Ridings of Yorkshire; the three divisions of Lincolnshire (Holland, Kesteven, and Lindsey); the east and west parts of Suffolk and of Sussex; the Isle of Ely (the remaining portion of Cambridgeshire forms the administrative county of Cambridgeshire); the Soke of Peterborough (the remaining part of Northamptonshire forms the administrative county of Northamptonshire); the County of London; the Isle of Wight and the Scilly Isles. There are thus sixty-three administrative counties, each governed by a County Council.

## CONSTITUTION

The County Council is the local authority for the Administrative County. It is a corporate body with perpetual succession and a common seal, and consists of the chairman, aldermen, and councillors.

**County Councillors** are elected by ballot every three years by the Local Government electors, qualified as described in Chapter VI. They all retire together.

*Qualifications*, in accordance with the Local Government Act, 1933, Sect. 57, as defined previously.

*Disqualifications* in accordance with the Local Government Act, 1933, Sect. 59, as defined previously. The provisions applying particularly to County Councils include the following: The chairman or sheriff is not disqualified by reason of holding an office of profit. Paid poor law officers are disqualified and those having been paid poor law officers and dismissed within five years prior to the election, teachers in voluntary schools, and coroners.

The county (excepting the part covered by county boroughs) is divided into single electoral divisions. One councillor is elected for each electoral division, and at the triennial election no elector can vote in more than one division of a county, although qualified to do so. The number of councillors and the number of divisions are, except in the case of London, regulated by the Secretary of State. (Local Government Act, 1933, Sect. 11.) The election is held on the 8th March or on such other date between the 1st and 8th March as may be fixed by the council. (*Ibid.*, Sect. 9.)

**The County Aldermen** are elected for six years by the councillors from among the councillors or persons qualified to be councillors. One-half their number retire every three years, and their successors are elected at the annual meeting which terminates their period of office. The number of aldermen is one-third the number of councillors.

**The Chairman** is elected by the councillors and non-retiring aldermen from among the members of the council, or from persons qualified to be councillors.

## MEETINGS

As a rule, the County Council holds only the statutory meetings, viz. an annual meeting and at least three other meetings. The first meeting after the triennial election takes place on the 16th March or such other day, within fourteen days after the 8th March as the council may fix. In other years a day in March, April, or May is fixed by the council. The additional powers conferred upon County Councils in recent years, however, often necessitate an adjournment of the quarterly meetings.

The power given to a county council by Sect. 294 (1) of the Local Government Act, 1933, to "defray any expenses necessarily incurred by members of the council in travelling to and from meetings of the council," does not authorize the payment of the expense of bodily subsistence. (*Glamorgan County Council v. Ayton*, 1936; W.N. 298; 155 L.T. 509; 34 L.G.R. 549.)

The Local Government (Members Travelling Expenses) Act, 1937, extends these provisions to Guardians Committees and also to Guardians Sub-Committees appointed to discharge functions throughout the whole area for which the Guardians Committee is responsible. It also authorizes the payment of travelling expenses to members of Assessment Committees whose area embraces two or more rating areas and also to members of Joint Committees and Boards of county, county borough or county district councils.

## COMMITTEES

The work is transacted principally by committees, who usually report certain matters to the council. The provisions applicable to committees of boroughs apply generally. In some cases committees have executive powers. A County Council may delegate its functions to committees with or without restrictions. County Councils may also delegate certain functions to other local authorities, e.g. classified roads and small holdings to District Councils. No committee may levy a rate, issue a precept for a rate, or borrow money. (Local Government Act, 1933, Sect. 85.)

Committees are of two kinds: (1) Ordinary and (2) Joint.

I. ORDINARY COMMITTEES are: (a) Statutory or (b) Standing.

(a) *Statutory Committees*, the appointment of which is compulsory under Act of Parliament, include—

- (i) Finance, under Local Government Act, 1933.
- (ii) Education, under Education Act, 1921.
- (iii) Public Assistance Committee and Guardians Committees under the Poor Law Act, 1930.

(iv) Small Holdings, under Small Holdings and Allotments Act, 1908. (This is now a sub-committee of the Agricultural Committee.)

(v) Local Pensions, under Old Age Pensions Acts.

(vi) Visiting, under the Lunacy Act, 1890.

(vii) Shops Act, under the Shops Acts, 1912 to 1934.

(viii) Local Pensions Committee, under the Naval and Military War Pensions, etc., Acts.

(ix) Maternity and Child Welfare, under the Public Health Act, 1936, Sect. 201.

(x) Agricultural, under Part III of the Ministry of Agriculture and Fisheries Act, 1919, which provides also for a Diseases of Animals Sub-Committee.

(xi) County Valuation Committee under the Rating and Valuation Act, 1925.

(b) *Standing Committees* are those which are appointed in accordance with the Standing Orders of the council. They depend on the extent of the functions of the council, but usually include—

(i) County Roads and Bridges.

(ii) Parliamentary.

(iii) Local Government.

(iv) Weights and Measures.

(v) General Purposes, or Executive.

(vi) Betting and Lotteries Act. Having regard to the Local Government Act, 1933, Sect. 85 (5), it would appear that this is the only committee which may be appointed under the Betting and Lotteries Act, 1934. The granting of licences may be delegated to this committee.

2. JOINT COMMITTEES are those whose functions are the concern not solely of the county, but also of other authorities which are represented on these Committees for joint and concerted action. They comprise those appointed to administer certain Acts. Council representation may consist either of the members of the council only, or, for matters of joint concern, of members of the council jointly with members of councils of other counties, county boroughs, or districts.✓

Joint Committees may also be as (a) Statutory or (b) Standing.

(a) (i) *Standing Joint Committee*. This is a statutory committee, consisting of Justices appointed by Quarter Sessions, and members of the County Council, in equal numbers. It is practically independent of the appointing bodies, though it reports to them both and has to raise its money through the

County Council. It appointed the Clerk of the County Council until the passing of the Local Government (Clerks) Act, 1931, which Act provided for future appointments to be made by the County Council. This Act is now incorporated in the Local Government Act, 1933, Sect. 98. The committee appoints the Chief Constable (subject to the approval of the Home Office), and, subject to certain conditions, controls the police. This committee, and not the County Council, deals with county property, which is partly of a judicial character, such as shire halls, police courts, and also determines the scale of salaries of the justices' clerks.

- (ii) *Mental Hospitals Visiting Committee* (see Chapter XXIV).
- (b) *Standing Joint Committees.*
  - (i) *Joint Committees under Standing Orders.*
  - (ii) *Inebriates Act Committee.*
  - (iii) *Sea and River Conservancy Committee.*
  - (iv) *River Pollution Prevention Committee.*

## POWERS AND DUTIES

The powers and duties of the County Council are of two kinds, viz.—

- (a) Direct functions, and (b) control over other local authorities.

### (a) *The Direct Functions.*

The principal direct functions are—

1. County roads and bridges, including Private Street Works. See Chapter XVIII.
2. Education. See Chapter XXI.
3. Mental Treatment and Mental Deficiency. See Chapter XXIV.
4. Public Health, including—
  - (a) Supervision of Midwives;
  - (b) Maternity and Child Welfare;
  - (c) Treatment of (i) tuberculosis, (ii) venereal diseases, (iii) cancer;
  - (d) Prevention of rivers pollution;
  - (e) Diseases of Animals (except in boroughs of 10,000 and over);
  - (f) Sewerage and Water Schemes (grants to District Councils under Sect. 57, Local Government Act, 1929);
  - (g) General Hospitals and Ambulances.
5. Housing.
6. Town and Country Planning Acts, 1932 to 1944.
7. Agricultural, viz.—
  - (a) Provision of Small Holdings;

- (b) Analyses of Fertilizers and Feeding Stuffs;
  - (c) Destructive Insects and Pests;
  - (d) Sea Fisheries Acts;
  - (e) Wild Birds Protection Act;
  - (f) Milk and Dairies Orders;
  - (g) Afforestation;
  - (h) Grading and Marketing of Produce;
  - (i) Freshwater Fisheries;
  - (j) Destruction of rodents;
  - (k) Diseases of animals;
  - (l) Injurious Weeds Destruction;
  - (m) Land Drainage;
8. Miscellaneous:—
- (a) Gas Inspection.
  - (b) Light Railways.
  - (c) Ferries.
  - (d) Airports.
9. County Control of:—
- (a) Poisons and Pharmacy Acts.
  - (b) Registration of War Charities.
  - (c) Weights and Measures.
  - (d) Shops Acts.
  - (e) Betting and Lotteries Act, 1934.
  - (f) Valuation of Rateable Properties.
10. Registration and Issue of Road Fund Licences under the Roads Act, 1920.
11. Children and Young Persons.
12. Public Assistance.
13. County Rural Libraries and Museums.
14. Collection of Licence Duties in respect of dogs, game, and guns.
15. Fabrics (Misdescription) Act.
16. Blind Persons Acts.
17. Local Land Charges Act, 1925.
18. Registration of Births, Marriages, and Deaths (Local Government Act, 1929).
19. Registration of Electors.
20. Superannuation (Local Government Superannuation Act, 1937).

(b) *Control.* The control by the County Council extends to all other local authorities in inverse ratio to their powers. That is to say, the control over the Parish Council and Parish Meeting is greater than that exercised over the Borough Council, and the control over the Rural District Council is more complete than

that over the Urban District Council. The control exercised by a County Council may be summarized as follows—

- (1) Alteration of Parish Boundaries after holding local inquiry (Local Government Act, 1933, Sect. 141).
- (2) Alteration of wards of Districts.
- (3) By-laws for good government (excluding boroughs).
- (4) Allotments in default of Borough, District or Parish Councils, or Parish Meetings.
- (5) Rights of way and roadside wastes.
- (6) Default action: Public Health and Housing.

## OFFICERS

The officers of a County are those appointed by (a) the Standing Joint Committee; (b) the County Council itself; and (c) the Crown.

(a) Those appointed by the Standing Joint Committee are the Chief Constable and the Clerk of the Peace. The Clerk of the County Council is *ex officio* Clerk of the Standing Joint Committee. (Local Government (Clerks) Act, 1931, Sect. 5 (4).)

The Clerk of the Peace on arising of a new vacancy is appointed by the Quarter Sessions. (*Ibid.* Sect. 2.) The Clerk to the County Council is to be asked whether he will fill both offices.

(b) The officers appointed by the County Council include the Clerk (since the passing of the Local Government (Clerks) Act, 1931), Treasurer, Surveyors, Medical Officer of Health, Public Analysts, Public Assistance Officers, Director of Education, Coroners, as well as Inspectors to comply with the requirements of the sanitary and other enactments, e.g. inspectors of weights and measures, and such other officers as the council think necessary.

**THE CORONER.** The office of Coroner dates from the year 1194, when he was an elected and not an appointed official, whose duty it was to check the rising power of the Sheriff. Until 1888 he was appointed by the freeholders of the county. The Coroners Act, 1926, provides that in future appointments of the Coroner and the Deputy-Coroner, who must be appointed in all cases, must be a barrister, solicitor, or legally qualified doctor. He, and his deputy, are disqualified for membership of the County Council. It is the duty of the Coroner to hold an inquiry or inquest in all cases of sudden and unaccounted-for deaths, or where there is the least suspicion of foul play. He also holds an inquest in all cases of death in prison (whether sudden or not), and in cases of deaths in mental hospitals, unless certain medical certificates are forthcoming. The Coroner also holds an inquest on all patients of unsound mind dying in Public Assistance

Institutions, and in all cases of treasure trove found within his district. It is said also that, by strict law, the Coroner must hold an inquest in cases of housebreaking, but in practice this duty has long gone by default. Within the City of London inquests are held in certain cases of fires.

On the 28th February, 1935, the Home Secretary announced the personnel of the Committee he had set up under the chairmanship of the Right Hon. Lord Wright "to inquire into the law and practice relating to Coroners and to report what changes, if any, are desirable and practicable." The Report was issued in 1936. (Cmd. 5070, price 1s. 3d.)

(c) By the Crown. **Judicial Officers.** The following officers of a modern county are appointed for judicial or national purposes.

THE SHERIFF is selected by the King in Council in March of each year from lists of three landowners in the county which have been approved on the previous 12th March by the Chancellor of the Exchequer presiding in the Court of the Lord Chief Justice.

These lists are submitted by the Judges of the King's Bench Division of the High Court of Justice presided over by the Chancellor of the Exchequer. The Sheriff for Lancashire is nominated by the King as Duke of Lancaster, and the Sheriff for Cornwall by the Duke of Cornwall. The office dates from late Anglo-Saxon times, when the *shire-reeve* was a purely royal official. The appointment is an annual one; it is compulsory and unpaid. His duties are to attend on the Judges, to summon and return juries, and to enforce all judgments of the High Court. He must appoint an Under-Sheriff, who discharges most of the duties. The Sheriff performs only the purely ceremonial duties of the office. He is not disqualified for membership of the Council by reason of holding a paid office.

THE LORD-LIEUTENANT is appointed by the Crown. His principal duties are to appoint Deputy-Lieutenants. The Lord-Lieutenant is generally the same person as the *Custos rotulorum* (keeper of the records), and head of the Commission of the Peace for the County. As such he recommends to the Lord Chancellor persons qualified for the office of Justice of the Peace.

JUSTICES OF THE PEACE for the county are appointed by the Lord Chancellor on the nomination of the Lord-Lieutenant, who is advised in his selection by an Advisory Committee.

In the County of Lancaster the appointments are made by the Chancellor of the Duchy, who is a politician holding the position for the duration of the Government.

A Justice is unpaid, and appointment is for life (except *ex officio* Justices, e.g. the Chairman of a County Council), but



Justices may be removed for misconduct. Their work is more fully dealt with in the preceding chapter.

## FINANCE

The Local Government Act, 1933, Sect. 86, provides that a Finance Committee shall be appointed; and this section provides that except with regard to the provisions affecting statutory committees, no expense exceeding £50 shall be incurred except upon a resolution of the Council passed on an estimate submitted by the Finance Committee.

The council estimates the amount which it will require to raise in the first six months, and in the second six months of the financial year by means of contributions. If, at the expiration of the first six months of the financial year, it appears to the council that the amount of the contribution or rate estimated at the commencement of the year will be larger than is necessary, or will be insufficient, the council may revise the estimate and alter accordingly the amount of the contribution or rate.

The sources of income are tolls, fees, rents, licences, etc., contributions from the Imperial Exchequer and loans. The deficiency in the County Fund is met by precepts on the Rating Authorities in accordance with the Rating and Valuation Act, 1925.

County Councils are responsible for the levy and collection of motor taxation licences, which are payable directly to the Council but paid over by them to the Minister of Transport. Local taxation licences (dogs, keeping and killing game, guns) are payable at Post (Money Order) Offices, but paid over to the county and county borough councils.

The Game Licences Act, 1860, requires persons killing game to hold a licence, but excepts coursing with greyhounds. The Lindsay Justices dismissed on information a case charging the respondent with having killed a hare in a private field by means of two greyhounds and without having a licence. The appellant revenue officer contended that the exemption applied only to organized coursing meetings. (*R. (Nevin) v. Clarke*, [1930] N.I. 174.) The Court held that the exemption was not so restricted and a licence was not necessary. (*Dolby v. Halmshaw*, [1937] 1 K.B. 196.)

LOANS for county purposes only (e.g. a shire hall) are limited for a period not exceeding sixty years in accordance with the Local Government Act, 1933. Other loans are limited by the respective enactments, e.g. Small Holdings and Allotment Acts; land, eighty years.

The County Council may borrow to lend to a Parish Meeting or Council any money they are authorized to borrow. The

Minister of Health has issued an Order (Loans for Advances to Parish Councils, 1934) regulating these loans. The County must discharge the loan within one year of the paying off of the advance by the Parish Council. The Parish Council must make repayments by equal yearly or half-yearly instalments within the statutory repayment period. The repayments of principal by the Parish Council must be applied by the County Council in repayment of the loan.

THE ACCOUNTS of the County Council and of the Standing Joint Committee are made up yearly to 31st March, and are subject to audit by the District Auditor of the Ministry of Health.

### RIGHTS OF ELECTORS

All members of the council and electors in the county possess the same rights as to inspection of minutes and accounts as those of members and electors in a borough.

### ROAD FUND LICENCES

The Roads Act, 1920, made county and county borough councils responsible for the collection of duties on licences for mechanically propelled vehicles imposed by the Finance Act, 1920, Sect. 13, and for the registration of all such vehicles. The Act has been amended in many directions by subsequent legislation.

Provision is made for repayment to the licensing authorities of their expenses properly incurred in connection with the issuing and registration of licences. (Sect. 3 (4).) Claims for this purpose may be rendered quarterly.

**Licensing and Registration.** Every applicant for a licence must make a declaration in the prescribed form and furnish the prescribed particulars in respect of the vehicle for which a licence is required. If the licensing authority is satisfied that the licence applied for is appropriate to the vehicle specified, a licence will be issued. Such licence does not entitle the holder to use it for any other vehicle. Where a vehicle is used for various purposes or in a manner such as to cause it to fall under more than one section of the second schedule to the Finance Act, 1920, as amended, duty must be paid at the highest appropriate rate. If a vehicle is registered for one purpose and it is desired to use it for a purpose which renders it liable to a higher rate of duty, the original licence must be surrendered and a fresh licence obtained by paying the difference between that higher rate and the rate of the surrendered licence.

The licensing authority must maintain a register of vehicles in respect of which licences have been issued and allocate identification marks to all vehicles according to the Regulations of

the Minister of Transport. The identification mark and number given to a vehicle must be retained irrespective of any change of ownership and the Regulations provide the manner in which ownership must be transferred.

**Trade Licences.** Special trade licences and trade plates are issued to manufacturers, dealers, and repairers of vehicles for use of vehicles in the course of their business. The conditions attached to the use of trade plates are set out in the Minister's Regulations.

**Hackney Carriages.** Vehicles licensed for use as hackney carriages are required to carry additional plates indicating the number of persons the vehicle is authorized to carry.

**Regulations.** The Minister of Transport is empowered to issue Regulations controlling the registration and licensing of motor vehicles. The principal Regulations are the Road Vehicles (Registration and Licensing) Regulations, 1924, as amended from time to time.

**Offences.** Penalties for various offences are set out in Section 13 of the Act of 1920, namely—

1. Use of unlicensed vehicle.
2. Fraudulent use of licence or identification marks.
3. Forging or altering licence or plates.
4. False declarations.

**Payment of Duties.** The Second Schedule to the Finance Act, 1920, as amended from time to time, classifies the vehicles and sets out the rate of duty for each class. The duty is payable by the person keeping the vehicle; he may or may not be the legal owner.

Licence duties are payable on the first day of any month for a period expiring on the 31st December, or for three or less months expiring on the 24th March, 30th June, 30th September, or the 31st December, of each year. The rates of duty on licences for periods of less than twelve months exceed a quarter of the annual licence.

The issue of seven-day licences for vehicles exceeding eleven tons in weight (unladen) is provided for by the Finance Act, 1933.

There are no statutory "days of grace" for payment of licence duties, but the Regulations provide for the payment of licences at Post (Money Order) Offices during a period of fourteen days before and after the last days of the quarterly periods. The effect of this provision is that a vehicle may be used for fourteen days immediately following the expiry of the previous quarter provided the licence duty is paid before the end of the fourteenth day.

**Classification of Vehicles.** The following are the classes of vehicles for purposes of the licence duties—

<i>Class</i>	<i>Basis of Assessment</i>
Motor cycles . . .	Cylinder capacity
Hackney carriages . . .	Seating capacity
Agricultural engines . . .	Unladen weight
Excavators . . .	" "
Mowing machines . . .	" "
Showmen's tractors . . .	" "
Goods (showmen) . . .	" "
Goods (agriculture) . . .	" "
Goods (electric) . . .	" "
Goods (steam) . . .	" "
Goods (coal gas) . . .	" "
Goods . . .	" "
Trailer goods . . .	" "
Private cars . . .	Horse-power

**Exemptions.** The following vehicles are exempt from duty—

Fire engines.

Ambulances.

Tractors for life-boats and their gear.

Road rollers.

Road construction.

Snow ploughs.

Farming implement trailers and living van.

Invalid carriages.

Foreign vehicles making a temporary stay.

Conveyances for electors.

Farmers' vehicles passing only between lands in the farmer's occupation or used on roads for not more than six miles per week.

Refuse removal vehicles.

Vehicles used by or under contract with a local authority for purposes of watering streets or cleansing gullies are subject to a reduced rate of duty.

**Refunds of Duty.** Upon surrender of a licence a refund is made of one-twelfth part of the annual duty for each whole month of the unexpired period in respect of annual licences and one-third of the quarterly duty for each whole month in respect of quarterly licences.

## THE COUNTY COUNCILS ASSOCIATION

*The County Councils Association Expenses (Amendment) Act, 1937*, increases the amount which a county council may subscribe in any one year to the Association to £157 10s.

## FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

### Part I. Functions of Local Authorities

#### (a) DISTRIBUTION OF CERTAIN FUNCTIONS BETWEEN LOCAL AUTHORITIES

1. *Administration of the Weights and Measures Act.* (i) This function should be assigned to County Councils and County Borough Councils, and to the Councils of Non-County Boroughs with a population of 20,000 who maintain a separate police force and are already administering the Weights and Measures Acts. Such Non-County Borough Councils should surrender their powers to the County Council where they are unable to discharge the function efficiently.

(ii) A County Council should be empowered to delegate the administration of the Weights and Measures Acts to the Council of any County District if they think fit.

2. *Licensing of Theatres, Cinematograph Exhibitions, and Places or Music and Dancing.*

(i) Provision for the licensing of theatres (excepting patent theatres and those licensed by the Lord Chamberlain), cinematograph exhibitions, and places for music and dancing should be made uniform.

(ii) The powers should be vested primarily in County and County Borough Councils and the Councils of the larger Non-County Boroughs and Urban Districts.

(iii) As regards other county districts, the County Councils should be authorized to delegate the work either to the District Council or to the justices in petty sessions.

(iv) With a view to securing a minimum standard of safety, a power to make general regulations for securing safety similar to that provided by Sect. 2 (1) of the Cinematograph Act, 1909, should be conferred on the Home Office.

3. *Reports to County Councils Under the Allotments Acts.* In substitution for the present arrangements, the local authorities responsible for their provision should be required to submit annual reports to the County Council, and not to the Ministry of Agriculture and Fisheries. It should be the duty of the County Council, upon the information thus obtained, to make an annual report to the Ministry of Agriculture and Fisheries.

4. *Relations Between County Councils and Standing Joint Committees in Regard to County Buildings and Finance.*

(a) The County Council should have control over so much of the county building as is not used exclusively for the purposes of police or the administration of justice, but in the case

of any buildings used partly for those purposes and partly for County Council purposes, the standing joint committee should have the right of user of such parts as they have hitherto used.

(b) The standing joint committee should be required to furnish the County Council, for the purposes of information before the beginning of each financial year, with an estimate of the expenditure and with any supplementary estimates.

## **Part II. Matters Relating to the Constitution of Local Authorities.**

### **AGRICULTURAL COMMITTEES**

(i) The law should be amended so as (a) to provide that the appointment of county agricultural committees should no longer be compulsory, but (b) to empower County Councils to appoint such committee if they think fit, with power to co-opt persons outside their membership.

(ii) The appointment of members by the Ministry of Agriculture and Fisheries should cease.

(iii) If effect is given to the foregoing recommendations, the powers conferred upon county agricultural committees by Sect. 12 (2) of the Agricultural Holdings Act, 1923, and by Sect. 5 (1) (ii) of the Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by Sect. 4 of the Act of 1923 should be transferred to County Councils.

## **Part III. Local Government Officers.**

### **OFFICES OF CLERK OF THE PEACE AND CLERK OF THE COUNTY COUNCIL**

The time has come to modify the anomalous position under which a County Council have no authority to appoint their own clerk, but must accept the person appointed by the Standing Joint Committee as Clerk of the Peace, who, moreover, virtually enjoys a freehold office, unless he has elected to accept the provisions of the Local Government Superannuation Act, in which case he can be required to retire at 65. The parties concerned reached agreement in regard to the manner in which the law should be amended, and effect was given to the agreement by the Local Government (Clerks) Act, 1931 (now Local Government Act, 1933, Sects. 98 to 100).

## SECTION III

# PUBLIC HEALTH, PUBLIC UNDERTAKINGS, NATIONALIZATION, AND PUBLIC PROTECTION

### CHAPTER XII

#### PUBLIC HEALTH

THE promotion of sanitation and public health is a responsibility of the citizen, and not merely the concern of the medical profession or the local authority.

The three main objects of public health work are claimed by Sir Arthur Newsholme, in *Health Problems in Organized Society*, to be—

1. The prevention of disease.
2. The enhancement of health.
3. The cultivation of the complete being of man, in order that physically, mentally, and morally there may be the highest self-development of a well-balanced nature.

Again, public health work is defined as embracing all activities which prevent disease and enhance the health of members of the community, and which can be carried out more efficiently by communal rather than by individual or family action.

Thus it is urged that the highest object of public health work, as of all social endeavour, is to cultivate the best mental and moral potentialities of each individual. The problems of housing, education, poverty and destitution have important bearings on public health, and the solution of many of the difficulties is by the "case" method.

The health of the population is determined by the total resultant of its activities, physical, mental, and moral, and neglect of any of the spiritual or physical factors of health will necessarily mean a corresponding loss of efficiency.

Of course, in the literal sense of the words, no reduction of death is possible. Every person born ultimately dies, but the problem of preventive medicine is to postpone every death to old age, and to save much suffering during life.

#### EARLY LEGISLATION

Systematic sanitary legislation began with the Public Health Act, 1848. This Act, which was the foundation stone of our

national sanitary legislation, was inspired by Sir Edwin Chadwick, at one time the private secretary to Jeremy Bentham, and owed much of its success to Sir John Simon, the Medical Officer to the General Board of Health and of the Local Government Board. Previous to this date there had been isolated efforts such as the Knackers' Act, 1786, but action had principally depended upon the efforts of individual towns. The existence of cholera in this country compelled action to be taken on national lines, and the Towns Improvement Clauses Act, 1847, was passed. The Public Health Act, 1848, largely based on local Acts, provided for the formation of a General Board of Health, which was created for five years, and had power to set up Local Boards of Health with extensive sanitary powers. Necessarily, it contained experimental provisions, some of which had been tentatively put forward by Improvement Commissioners and local authorities from the beginning of the century, and others which had been rushed through in 1848 to deal with the urgent problem of a cholera epidemic.

A new Act was passed in 1854, renewing the Public Health Act, 1848, on an annual basis; and, in 1858, the functions of the General Board of Health were, by the Public Health Act, 1858, divided between the Home Office and the Privy Council, acting through the Board of Trade.

The transfer of these public health powers from the Home Office and the Privy Council, to the Board under the provisions of the Local Government Board Act, 1871, was followed by the Public Health Act, 1872. This Act was passed by a Liberal Government on the basis of the Reports of the Royal Sanitary Commission of 1869-71. In urban areas it vested the powers in the Borough Councils, Town Improvement Commissioners, or Local Boards; and, in rural areas, in the Boards of Guardians. Various Acts were passed from 1871 until 1875, principally as the result of the experimental private legislation of large towns.

### CASE LAW

A most important branch of sanitary law, so far as sanitary engineers, architects, and town and country planners are concerned, is undoubtedly that which is laid down and settled in the Courts of Law, and known as Case Law. There are many hundreds of interesting cases, all of which are more or less important, many from the engineer's point of view.

### THE PUBLIC HEALTH ACT, 1875

The Public Health Act, 1875, was until recently the principal sanitary Act, and with its amending Acts, principally those of



1890, 1907 and 1925, formed the basis of our sanitary code. It has largely been repealed and re-enacted, with modifications, in the Public Health Act, 1936, and the Food and Drugs Act, 1938.

**Miscellaneous Provisions.** The unrepealed Sections of the Act give urban district councils power—

(1) to arrange for the lighting of streets, either directly or by contract (Sect. 161); the Lighting and Watching Act, 1833, being superseded in urban areas by this Act (Sect. 163);

(2) to undertake the supply of gas within their areas, including power to purchase the undertaking of a gas company. (Sect. 162);

(3) to purchase or to take a lease on, lay-out and maintain land for public parks and pleasure grounds (Sect. 164);

(4) to provide public clocks, including lighting thereof at night (Sect. 165).

Provisions (3) and (4) have been extended to rural district councils by the Urban Powers Order, 1931.

Certain sections of the Gas and Waterworks Clauses Act, 1847, were incorporated in the Act of 1875 together with certain provisions of the Town Police Clauses Act, 1847, dealing with police regulations in urban areas for such matters as—

(1) obstructions and nuisance in the streets;

(2) fires;

(3) places of public resort; and

(4) hackney carriages.

The Act of 1875 consolidated and amended practically all sanitary legislation then operative, extended the powers and obligations of the local authorities, and is still regarded as the real foundation of public health administration. It placed further duties and responsibilities on the Local Boards which, twenty years later, as a result of the passing of the Local Government Act, 1894, became known as Urban District Councils, a designation which still remains. By the same Act, Rural District Councils replaced the Boards of Guardians as the rural sanitary authority.

It was not for some years after the Act of 1875, however, that local government seriously widened its scope and assumed control of gas, water, tramways, and electricity works—to mention a few of the more popular forms of municipal trading.

The Public Health Acts, 1875 to 1938, do not apply generally to the Metropolis, Scotland, or Ireland, except so far as certain Acts have incorporated their provisions. The Metropolis has its own public health legislation which formerly consisted of 80 statutes. These Acts have now been consolidated in Public Health (London) Act, 1936.

The powers and duties conferred on Local Authorities are very wide, comprising prevention as well as cure, construction as well as destruction. Markets, slaughter-houses, hospitals and public parks may be provided; common lodging-houses, offensive trades, the condition of food offered for human consumption, etc., must be carefully controlled and regulated in the public interest. All this costs money, and Local Authorities are consequently given adequate powers of raising funds for the purpose, both by levying rates and by borrowing, but for these powers reference must be made to the Rating and Valuation Act, 1925, and the Local Government Act, 1933, respectively.

### CONSOLIDATION OF HEALTH LAWS

*The Local Government and Public Health Consolidation Committee* was appointed in December, 1930, by the Minister of Health, in pursuance of the policy of the consolidation of legislation regulating the work of the Ministry, with the following terms of reference—

“with a view to the consolidation of the enactments applying to England and Wales (exclusively of London) and dealing with—

“(a) Local Authorities and Local Government; and

“(b) matters relating to the Public Health;

“to consider under what heads these enactments should be grouped in consolidating legislation, and what amendments of the existing law are desirable, for facilitating consolidation and securing simplicity, uniformity, and conciseness.”

The Committee was presided over by the late Viscount Chelmsford, and, subsequent to his death, by the Rt. Hon. the Lord Addington. The Committee produced an Interim Report in 1933, together with a Draft Local Government Bill, which became the Local Government Act, 1933.

### PUBLIC HEALTH BILL, 1936

The Second Interim Report of the Local Government and Public Health Consolidation Committee, together with a draft Public Health Bill, was presented by the Minister of Health to Parliament in January, 1936. This Report contained a full statement of the principles upon which the work of the Committee had been carried out and of the more important amendments of the law which they recommended in the interests of simplification and clarity. In addition, an Appendix to the Report drew attention in great detail to the various drafting and other amendments made and the reasons which had led the Committee to

propose alterations of the law. The proposals with regard to by-laws are in a large measure founded on a valuable Report made by a Departmental Committee in 1918 (Cmd. 9213).

The Public Health Bill, 1936, was not so extensive as was at one time expected. It is explained in the Report that a Bill covering all the provisions of the Public Health Acts and their associated statutes would include not less than 1,000 clauses. Instead of producing a Bill of this size, the Committee decided that it would be expedient to produce several Bills of what they call "moderate length." An examination of the provisions of the Public Health Acts, as amended by the Local Government Act, 1933, showed that they might be roughly classified as follows—

(a) provisions of a strictly public health character relating to the prevention and treatment of disease, that is, as regards environment, to such matters as drains and sewers, buildings, water supply and the abatement of nuisances, and as regards personal hygiene to such matters as the provision of hospitals, maternity centres, etc.;

(b) provisions with regard to streets and building lines;

(c) provisions dealing with food;

(d) provisions dealing with public amenities—recreation grounds, open spaces, etc.;

(e) provisions as to the licensing of hackney carriages, pleasure boats, servants' registries, etc.;

(f) provisions dealing with burial and cremation;

(g) provisions of a "police" character, e.g. offences in streets and places of public resort;

(h) provisions dealing with river pollution.

It was therefore decided to deal at first only with the first of these. The result was a Bill of 12 Parts, 334 clauses and 2 Schedules.

Presumably, the Committee will continue its work and will, in course of time, produce Bills covering the seven other headings within the terms of reference. This does not necessarily mean seven further Bills. Some of the subjects may be combined. And if the stated ideal of Bills of roughly 350 clauses each is to be attained it seems that only two—or at most three—Statutes will suffice.

In April, 1939, the Minister announced that the work was in abeyance.

### **PUBLIC HEALTH ACT, 1936**

The Public Health Act, 1936, is by no means just another Consolidation Act. It contains more amendments of substance than the Local Government Act, 1933. On the subject of sewers, for instance, its provisions are very drastic. It incorporates, too,

many of the provisions which have become common form in local Acts. On the consolidation side it necessarily leaves outstanding many of the provisions of the remaining Public Health Acts proper, the collective short title of which is the Public Health Acts, 1875 to 1932. Of the Public Health Act, 1875, for instance, it leaves about 108 sections unrepealed, or, in terms of number, rather less than one-third of the Act.

**Public Health Acts Repealed.** Of the other Public Health Acts proper, only four are wholly repealed, namely—

- the Public Health (Water) Act, 1878;
- the Public Health (Fruit Pickers' Lodgings) Act, 1882;
- the Public Health (Ships, etc.) Act, 1885;
- and the Housing of the Working Classes Act, 1885.

To these must be added certain Acts which are commonly classified as Public Health Acts, though they are not within the statutory definition—

- the Public Health Act, 1896;
- the Public Health (Ports) Act, 1896;
- the Cleansing of Persons Act, 1897;
- the Public Health Act, 1904;
- the Public Health (Prevention and Treatment of Diseases) Act, 1913; and
- the Public Health (Officers) Act, 1921.

Other Acts wholly repealed were—

- the Baths and Wash-houses Acts;
- the Canal Boats Act, 1884;
- the Infectious Disease (Notification) Acts;
- the Notification of Births Acts;
- the Maternity and Child Welfare Act, 1918; and
- the Nursing Homes Registration Act, 1927.

All these statutes, together with various provisions of some thirty other Acts, were repealed from the commencement of the Act, viz. 1st October, 1937.

The Isolation Hospitals Acts, 1893 and 1901 were repealed two years later.

The Act comprises twelve Parts, 347 sections and three Schedules. The twelve Parts are as follows—

- Part I. Local Administration.
- Part II. Sanitation and Buildings.
- Part III. Nuisances and Offensive Trades.
- Part IV. Water Supply.
- Part V. Prevention, Notification and Treatment of Disease.
- Part VI. Hospitals, Nursing Homes, etc.

Part VII. Notification of Births; Maternity and Child Welfare and Child Life Protection.

Part VIII. Baths, Wash-houses, Bathing Places, etc.

Part IX. Common Lodging Houses.

Part X. Canal Boats.

Part XI. Miscellaneous.

Part XII. General.

There are three Schedules, viz.—

First Schedule.—Provisions as to Medical Officers of Health and Sanitary Inspectors of Port Health Districts.

Second Schedule.—Sections of Act extending to London for certain purposes.

Third Schedule.—Enactments repealed.

**Central Administration.** *Minister* means the Minister of Health. (Sect. 343.)

## PART I LOCAL ADMINISTRATION

The enactment of the Local Government Act, 1933, necessarily restricts the scope of this Part of the Act.

The treatment of disease, apart from the supervisory and co-ordinating activities of the central departments, is a function of the Local Authorities. This responsibility continues to be scattered among various local authorities—Public Health, Education, and Public Assistance Committees. These act in large measure independently of one another, their efforts being defective in many directions, and redundant in other directions.

It may be desirable to define further that by public health administration is meant the work of authorities who are elected by and are responsible to the ratepayers. This excludes the diverse and valuable public health work undertaken by voluntary associations.

### LOCAL AUTHORITIES FOR PURPOSES OF ACT

(1) Subject to the provisions of the Act with respect to certain special authorities, districts and areas, it is the duty of the following authorities to carry the Act into execution, viz.—

(i) in a county borough: the council of the borough;

(ii) in the administrative county—

(a) as respects certain matters, the county council, and

(b) as respects all other matters, the councils of county districts, without prejudice, however, to the exercise by a parish council of any powers conferred upon such councils (Sect. 1 (1)).

*Local Authority* means the council of a borough, urban district, or rural district;

*Urban Authority* means the council of a borough or urban district;

*Rural Authority* means the council of a rural district;

*District*, in relation to the local authority of a borough, means the borough; and

*Parish*, in relation to a common parish council acting for two or more grouped parishes, means those parishes (Sect. 1 (2)).

**Parish Council and Parish Meeting.** The parish council and parish meeting are not sanitary authorities within the meaning of the Public Health Acts; nevertheless they have several direct and indirect public health powers.

The Public Health Act, 1936, authorizes them to deal with any pond, pool, ditch, gutter, or place containing any drainage or matter likely to be prejudicial to health. (Sect. 260.)

They can utilize any well, spring, or streams within their parish, and provide facilities for obtaining water therefrom. (Sect. 125.)

The Local Government Act, 1933, enables a rural district council to delegate to a parish council any functions which may be delegated to a parochial committee under Sect. 87 and thereupon that section shall apply as if the parish council were a parochial committee. (Sect. 88.) Subject to the adoption by the parish meeting, the parish council can administer the Parochial Adoptive Acts, e.g. the Burial Acts, and the Public Improvement Act, 1890.

A parish council has the same power to provide baths, bathing places and washhouses for their parish as any other local authority. Formal adoption by the parish meeting is no longer required. (Public Health Act, 1936, Sect. 230.)

A parish council has indirect power in that they can complain to the county council if the rural district council are not carrying out their duties under the Public Health Acts. The county council may, if satisfied that the complaint is justified, make complaint to the Minister of Health who, after holding a local inquiry, may make an order transferring the powers to the county council.

**District Councils.** Both Urban and Rural District Councils must appoint a medical officer of health and sanitary inspector. A closely packed town population has problems of health which do not arise in rural districts; there is a distinction as regards the powers of these two kinds of authorities.

(a) **URBAN DISTRICT COUNCILS** (and also County Borough and Non-County Borough Councils) have all the following powers—

(i) Inspection and abatement of nuisances. Drainage, sewerage, and sewage treatment. Street cleansing. Refuse removal and disposal. Regulation and inspection of common lodging houses, dairies, milkshops, cowsheds, cellar dwellings, workshops and workplaces, laundries, canal boats, and bake-houses. Inspection of food. Provision of water supply. Infectious diseases. Provision of hospitals, cemeteries, crematoria. Regulation of new buildings by building by-laws. Town and County Planning. Provision of houses. Provision of open spaces and public conveniences. Provision of baths and wash-houses. Slaughter-houses. River Pollution Prevention.

(ii) Control of offensive trades, street lighting, and private street works. Fire prevention.

(b) RURAL DISTRICT COUNCILS have powers under (i) only. They may, however, by application to the Ministry of Health, obtain by order such of the powers of an Urban District Council as may be approved.

**(Non-County) Borough Councils.** These have all the powers and duties of the Urban District Council, but while County Boroughs are quite outside the jurisdiction of the County Council, the Non-County Borough Councils are under some limitation. Invariably, where the population is less than 10,000, and sometimes when it is more, they do not administer the Acts relating to maternity and child welfare, contagious diseases of animals, destruction of insects and pests, and the sale of food and drugs.

**County Borough Councils.** For sanitary purposes these exercise the powers and duties both of Urban District Councils (see above) and County Councils (see below).

**County Councils.** County councils are not primarily sanitary authorities under the Public Health Acts. Their powers in this respect are largely limited to control over the district local authorities. They are, however, primarily responsible for certain matters such as certain roads, tuberculosis, venereal disease, blind welfare, supervision of midwives, mental treatment, vaccination, control of nursing and maternity homes, registration of births, deaths and marriages, food adulteration, sale of poisons, and inebriates homes. They also have powers and duties in relation to hospitals, housing, health of school children, and diseases of animals.

The Public Health Act, 1936, empowers county councils to contribute towards defraying the expenses of a district council, wholly or partially within the county, incurred in the provision or maintenance of any sewers or sewage disposal works or by the supply or improvement in the existing supply of water,

such sums as appear to the county council to be reasonable in the circumstances. (Sect. 307.)

In addition, a district council may, by agreement with the county council, surrender to the county council any of their public health functions and transfer any necessary property, etc., in accordance with the terms of the agreement, which might provide, for instance, that the expenses incurred in exercising these functions should be shared or divided in stated proportions. A copy of the agreement must be sent to the Minister though it does not require his confirmation.

**Powers under the Sanitary Adoptive Acts.** The Sanitary Adoptive Acts contain a number of provisions which are not applicable to rural district councils, but such councils may be invested with these powers by order of the Minister of Health. (Public Health Acts Amendment Act, 1890, Sect. 5.) Similarly, a rural district council may obtain the larger sanitary powers of an urban district council by an order of the Minister of Health under the Public Health Act, 1875, Sect. 276, or the Public Health Act, 1936, Sect. 13. Many of the provisions of the latter Acts formerly contained in the Adoptive Acts have been granted simply as powers, so that no formal adoption is now necessary.

## COMMITTEES

Local authorities do their work generally through the medium of committees. For the purpose of public health a local authority may authorize any committee to exercise all the powers of the council (except the power of levying, or issuing a precept for a rate, or of borrowing money), including the institution of legal proceedings. This latter power is important in the case of public health, for without it the abatement of nuisances, etc., would be delayed by the necessity of waiting till the next Council Meeting.

Rural districts frequently consist of large areas with scattered centres of population. Hence, Rural District Councils may form a Parochial Committee in accordance with Sect. 87 of the Local Government Act, 1933. Such committee may be appointed for one or more contributory places within their district consisting either wholly of members of the District Council or partly of such members and partly of local government electors for such contributory place or places, as the council may determine. These committees may act as the agents of the council in certain public health matters, e.g. inspection of the parish as to nuisances, necessity for and execution of works, report on the work of officers and servants of the council.

County Councils may appoint a Public Health and Housing Committee, and, unless the matter is urgent, before taking any



action on these matters the council should refer the question to the committee, and receive and consider their report. In addition, the council may delegate to the committee the whole of their powers under the Public Health Acts and Housing Acts, without any restriction or conditions except those of making a rate, borrowing money, or taking over the powers of a defaulting Rural District Council. The large areas of counties and the infrequency of the Council meetings make this essential if subordinate authorities are to be supervised effectively.

The councils of all counties, and of boroughs with a population in excess of 10,000, must appoint a committee to administer the provisions of the Diseases of Animals Acts. (Act 1894, Sect. 31.)

Apart from the special provisions stated above, the general practice of councils is to appoint a Public Health Committee to carry out all the work of the Council that is administered by the medical officer of health and the sanitary inspector.

The National Health Services Act, 1946, makes the appointment of a Public Health Committee by county and county borough councils obligatory.

## PORT HEALTH AUTHORITIES AND JOINT BOARDS

The peculiarities of seaports necessitate a special method of treatment. For this reason provision is made for the constitution of a Port Health Authority. The Order constitutes one or more riparian sanitary authorities the Port Health Authority for the waters of the port, as defined in the Order. The area of such an authority consists of the waters of the port and so much of the areas of the abutting authorities as may be determined. (Sect. 2.)

### Constitution of Port Health District under Port Health Authority

(1) Riparian authority means—

(a) any local authority whose district, or any part of whose district, forms part of, or abuts on that port or part of a port; and

(b) any conservators, commissioners, or other persons having authority in, over or within that port or part of a port.

(2) The Minister may by order—

(i) constitute a Port Health District consisting of the whole or any part of a port, and either—

(a) constitute one riparian authority the port health authority for the district, or

(b) constitute a Joint Board, consisting of representatives of two or more riparian authorities, to be the Port Health Authority for the district;

(ii) constitute a Port Health District consisting of any two

or more areas, being ports or parts of ports, and constitute a Joint Board, consisting of representatives of two or more riparian authorities, to be the Port Health Authority for the district.

(3) A Joint Board so constituted a Port Health Authority is a body corporate by such name as may be determined by the Order constituting the Port Health District, and has perpetual succession and a common seal and power to hold land for the purposes of their constitution without licence in mortmain.

(4) Where the Minister proposes to make an Order under this section, he must give notice to every riparian authority affected and if within twenty-eight days after such notice they give notice of objection to the Minister, and the objection is not withdrawn, any Order must be provisional only and must not have effect until confirmed by Parliament.

(5) All expenses incidental to the constitution of a Port Health District shall be payable by the Port Health Authority. (Sect. 2.)

All shipping entering any port is brought within the provisions relating to nuisances contained in the Public Health Act, 1936, (Sects. 2 to 10 and 267.)

THE PORT SANITARY REGULATIONS, 1933 (S.R. & O. 38), consolidated into one Code the regulations relating to sanitary control of shipping in ports with the exception of the Order of 1912 relating to cleansing and disinfecting.

## CONSTITUTION OF A UNITED DISTRICT

(1) Application may be made to the Minister by the local authorities concerned to be constituted a United District for any purposes of this Act, or of the Public Health Acts, 1875 to 1932, so far as not repealed, and the Minister may, by order, constitute for that purpose a united district consisting of such of those districts or parts of districts as can, in his opinion, be combined advantageously.

(2) The governing body shall be a Joint Board, which shall be constituted by the order constituting the district and shall consist of representatives of the local authorities of the constituent districts.

(3) A Joint Board are a body corporate by such name as may be determined by the Order constituting the united district, and shall have perpetual succession and a common seal and power to hold land for the purposes of their constitution without licence in mortmain.

(4) The Minister shall give notice of his intention to make an

Order to the local authority of every district proposed to be included in the united district and also to the County Council. If within twenty-eight days they give notice to the Minister that they object to the proposal and the objection is not withdrawn, the Order shall be provisional only and shall not have effect until it is confirmed by Parliament.

(5) All expenses of, and incidental to, the constitution of a united district shall be paid by the Joint Board. (Sect. 6.)

#### **Restriction on Discharge of Functions by Local Authorities within United Districts.**

(1) A local authority having jurisdiction in any part of a united district shall cease to discharge in relation thereto any functions which are functions of the Joint Board.

(2) Where under the preceding subsection any functions of a Joint Board are delegated to a local authority, that authority in the discharge thereof shall act as agents of the Joint Board. (Sect. 7.)

#### **Joint Boards Representing Councils of Counties and County Boroughs.**

(1) The joint bodies representing councils of counties and county boroughs for public health purposes are called "joint boards" constituted by Order of the Minister.

(2) A Joint Board constituted under this section shall be a body corporate by such name as may be determined by the Order constituting the Board, and shall have perpetual succession and a common seal and power to hold land for the purpose of their constitution without licence in mortmain.

(3) Joint committees constituted under Sect. 5 of the Public Health (Tuberculosis) Act, 1921, or under any enactment repealed by that Act, will be known as Joint Boards and not as Joint Committees. (Sect. 8.)

#### **General Provisions as to Orders Constituting Port Health Districts, United Districts, and Joint Boards.**

(1) An Order made by the Minister under the foregoing provisions of this Part of this Act may contain such incidental, consequential and supplemental provisions as appear to him to be necessary to bring the Order into operation.

(2) Any such Order may be amended or revoked by a subsequent Order made by the Minister.

(3) Any reference in this Act to an Order shall be construed as including a reference to any Order made under this section for the amendment of the original Order. (Sect. 9.)

**Borrowing Powers of Port Health Authorities and Joint Boards.**

The Authority or Joint Board shall have the like powers of borrowing for the purposes of their functions under the Order as a local authority has of borrowing for the purposes of their functions under this Act. (Sect. 10.)

**DIVISION OF DISTRICTS****Power of Urban Authority to Divide their District.**

Sect. 11 of the Act provides that—

(1) an urban authority may divide their district into parts for all or any of the purposes of the Act, and may vary or discontinue any such division;

(2) where a district is so divided into parts, the authority in levying rates must charge separately on each of those parts all expenses incurred (including loan charges and a share of "common expenses" in respect of that part for the purpose or purposes for which the division was made. (Sect. 11.)

**Constitution and Dissolution of Special Purpose Area in Rural District.**

(1) A rural authority may, with the approval of the Minister, constitute any part of their district a Special Purpose Area for the purpose of charging thereon exclusively or any other special expenses.

(2) Special Drainage Districts constituted under Sect. 277 of the Public Health Act, 1875, are to be known as "Special Purpose Areas."

(3) The Minister may by order vary or dissolve any Special Purpose Area, whether constituted under this Act or as mentioned in the last preceding subsection. (Sect. 12.)

It will be observed that an urban district council may divide its area for any public health purpose and without the consent of the Minister. A rural district, however, can be divided only with the approval of the Minister and only in respect of special expenses.

**Investment of Rural Authorities with Urban Powers.**

(1) The Minister on an application made to him has power to invest a particular rural authority with urban powers.

(2) An application for the purposes of this section may be made by—

(a) the council of the rural district;

(b) the council of the county in which the district is situate;

(c) the parish council of any parish situated in the district; or

(d) any number of local government electors for the district or for any contributory place therein, not being less than—

- (i) one hundred; or
- (ii) one-third of the total number of those electors which-  
ever is the less. (Sect. 13.)

Certain powers under the Public Health Act, 1936, are only possessed by urban district councils and borough councils, but these may be extended to rural district councils by an Order of the Minister of Health under the above Section. These powers are to be found in the following Sections of the Act--

(1) Notice to be given of intention to alter or reconstruct underground drainage. (Sect. 41.)

(2) Sanitary conveniences in factories, workshops, and work-places. (Sect. 46.)

(3) Power to require removal of noxious matter by the occupier of premises. (Sect. 79.)

(4) Power to require periodical removal of manure from stables. (Sect. 80.)

(5) Restriction on the establishment of offensive trades. (Sect. 107.)

(6) By-laws as to certain trades. (Sect. 108.)

(7) Watercourses not to be culverted except in accordance with approved plans. (Sect. 263.)

(8) Power to require the cleansing and repair of culverts. (Sect. 264.)

## PART II

### SANITATION AND BUILDINGS

This Part deals with sewerage and sewage disposal; private sewers and drains and cesspools; sanitary conveniences for buildings; provisions with respect to buildings; by-laws with respect to buildings and sanitation; removal of refuse, scavenging, keeping of animals, etc.; filthy or verminous premises or articles, and verminous persons; public sanitary conveniences.

### SEWERAGE AND SEWAGE DISPOSAL

The Romans had elaborate systems of water supply and sewerage. In Homer there is reference to sulphur as a disinfectant; and in medieval plagues there is record of fumigation of streets and towns by large fires. In *Hudson v. Taber* (2 Q.B.D. 290) it was said the King has probably from the earliest times had a right, as part of the prerogative, to defend the realm against waste of the sea and to order the construction of defences at the expense, generally, of those who are to benefit by them. The various statutes of sewers, beginning with the statute of 6 Henry VI, c. 5, merely regulate the exercise of the prerogative in this respect and prescribe the forms of commissions for the

ordering and erection of the necessary works, which forms have from time to time been varied.

The science of hygiene was little thought of until the late Dr. Parkes published *Military Hygiene*, about the year 1855, before which date many of our English rivers had been turned into open sewers, and the separate system of sewerage and drainage was not generally recognized until about 1884.

The powers of local authorities in this connection may thus be summarized—

1. The local authority must cause to be made such public sewers as are necessary for effectively draining its particular district; or may adopt, and in certain cases must adopt, the sewers constructed by other persons;

2. Every owner or occupier is entitled to connect with any sewer on condition that he gives notice and complies with the council's regulations, and is subject to control by the council's appointed officer;

3. Every owner without the district has the same rights, subject, however, to such conditions as may be agreed to or settled by law and arbitration;

4. If a house has no sufficient drain, the occupier may be required to provide one, to discharge into a sewer if there is one within 100 ft., or otherwise into a cesspool as the council may direct;

5. New houses in urban districts must have sufficient drainage as the local authority requires; and

6. In an urban district no building may be newly erected over a sewer without the consent of the local authority.

The removal and disposal of sewage constitutes a very important part of the work of the sanitary authority. Especially in inland towns, enormous quantities of "sludge" are accumulated at sewage disposal works. If a ready means could be found of converting this "sludge" into a useful fertilizer, there would be a wide field open to its use. Before 1914 the Oldham Corporation erected a plant, under the direction of Dr. J. Grossman, for the purpose of converting the waste products of sewage into marketable commodities such as fertilizers and grease. The war of 1914-18 very materially interfered with the development of the process in England, but large schemes have been installed in America.

Definitions according to Sect. 343 of the 1936 Act—

**Drain** means a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage.

**Sewer** does not include a drain as defined in this section but,

save as aforesaid, includes all sewers and drains used for the drainage of buildings, and yards appurtenant to buildings.

*Private Sewer* means a sewer which is not a public sewer.

*Public Sewer* has the meaning assigned to it in Sect. 20 of the Act which provides—

“(2) Sewers which by virtue of this section continue to be, or become, vested in a local authority shall be known as, and are in this Act referred to as ‘Public sewers’:

“Provided that a sewer constructed by a local authority after the commencement of this Act for the purpose only of draining property belonging to them shall not be deemed to be a public sewer for the purposes of this Act until it has been declared to be a public sewer.”

The definitions contained in the Metropolis Management Act, 1855, were almost identical with those in the Public Health Act, 1875, which did not apply to the Metropolis.

**General Duty of Local Authority to Provide for Sewerage of Their District.** It shall be the duty of every local authority to provide such public sewers as may be necessary for effectually draining their district for the purposes of this Act, and to make such provision, by means of sewage disposal works or otherwise, as may be necessary for effectually dealing with the contents of their sewers. (Sect. 14.)

#### **Provision of Public Sewers and Sewage Disposal Works.**

(1) A local authority may within their district—

(i) construct a public sewer

(a) in, under or over any street, or under any cellar or vault below any street, and

(b) in, or on or over any land not forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(ii) construct sewage disposal works on any land acquired or lawfully appropriated, for the purpose;

(iii) by agreement acquire, whether by way of purchase, lease or otherwise

(a) any sewer, or

(b) any sewage disposal works, or

(c) the right to use any sewer or sewage disposal works.

(2) Where a rural authority propose to carry out works for the sewerage of any part of their district, they shall, before adopting plans of the works, give notice of their proposals to the parish council or parish meeting of each parish to be served by the works. (Sect. 15.)

### Notices to be Given Before Constructing Public Sewers, or Sewage Disposal Works Outside District.

(1) A local authority who, in the exercise of their powers under the last preceding section, propose to construct any public sewer or sewage disposal works outside their district shall, in addition to giving any notice required by that section—

(a) publish by advertisement in a local newspaper circulating in the district in which the proposed work is to be executed a notice

(i) describing the nature of their proposals, and

(ii) specifying the land in or on which they propose to execute any work, and

(iii) naming a place where a plan illustrative of their proposals may be inspected at all reasonable hours by any person free of charge; and

(b) serve a copy of the notice on the local authority of the district in which the proposed work is to be executed.

(2) If, within twenty-eight days after the publication of the notice referred to in the preceding subsection, notice of objection to their proposals is served on the local authority either by

(a) the local authority of the district in which the proposed work is to be executed, or

(b) any owner or occupier of land directly affected by the proposals,

they shall not proceed with their proposals, unless all objections so made are withdrawn, or the Minister, after a local inquiry, has approved the proposals, either with or without modification.

(3) The foregoing provisions of this section shall not apply where a work which a local authority propose to carry out in the district of another local authority consists only of the construction of a public sewer in a highway repairable by the inhabitants at large and they have obtained the consent of that other local authority. (Sect. 16.)

### Adoption by Local Authority of Sewers and Sewage Disposal Works.

*The distinction between sewers and drains* has been the subject of much litigation, and it is important from the point of view of property owners on the one hand and local authorities on the other. The importance to the landowner consists mainly in this: that a drain or private sewer has to be maintained and kept at the cost of the owner, while a public sewer has to be maintained and repaired by the local authority. A *drain* was formerly defined as a pipe or channel used merely to communicate between a single building or a block of buildings and a general receptacle for sewage matter. A *sewer* included all channels for the carrying



off of refuse, except drains, and except such pipes as are under the control of a special road authority. A *drain* which operated between two or more houses under separate ownership was a *sewer*.

Sect. 13 of the Act of 1875 provided that all sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto, with certain exceptions, should vest in and be under the control of such local authority. The exceptions included sewers made by any person for his own profit or by any company for the profit of the shareholders. Sect. 15 provided that every local authority should keep in repair all sewers vested in them, and cause to be made sewers necessary or effectual for draining the district for the purposes of the Acts.

If a private drain was altered to take the drainage of two or more houses in separate occupation, it became a sewer from the point where it first conveyed the drainage of a second house. (*Beckenham U.D.C. v. Wood*, 1896, 60 J.P. 490 D.C.) Such a sewer vested in the local authority who were charged with the duty of repair from that point. The local authority had a right of repair. If the Public Health Act, 1890, had been adopted, however, the pipe was a single private drain and the cost fell upon the owner for the abatement of nuisance. (*Pemsel and Wilson v. Tucker*, [1907] 2 Ch. 191). (See also *Hill v. Aldershot U.D.C.*, [1933] 1 K.B. 259.)

The leading cases on the subject were *Wood Green U.D.C. v. Joseph*, [1908] A.C. 419; and *Hill v. Aldershot Corporation*, [1933] 1 K.B. 259. These cases were materially affected when the Public Health Act, 1936, came into operation on the 1st October, 1937. The law on the subject is now as follows—

The Act repeals Sect. 13 of the Public Health Act, 1875, and as regards future sewers substitutes the procedure set out in Sect. 17. The salient points of this procedure are as follows—

(a) The distinction between a drain—that is a pipe serving one building only—and a sewer is maintained. A distinction is drawn between public and private sewers. Sewers constructed after the commencement of the Act will not vest in a local authority until formally taken over by them in accordance with the machinery set up by Sect. 17 when they become public sewers. A public sewer is a sewer vested in the local authority.

(b) Sect. 17 applies only to sewers completed after the commencement of the Act. The responsibility for sewers completed before that date will remain practically unaltered, i.e. they will be the responsibility of the local authority, subject to certain rights of recovery of expenses. (Sect. 24.)

The Act provides that a local authority may at any time

declare that any sewer or sewage disposal works situate within their district shall vest in and be under their control as from such date as may be specified.

## PRIVATE SEWERS AND DRAINS AND CESSPOOLS

**Sewers Made for Profit.** The provisions of Sect. 13 of the Public Health Act, 1875, referred to on page 234, have given rise to litigation, and it is not easy to reconcile all the judicial decisions, but in broad outline the effect of the decisions, including an important decision recently given in the case of *Southstrand Estate Development Company v. East Preston R.D.C.*, [1934] 1 Ch. 254, may be stated as follows—

- (a) Whether a sewer is made for profit is a question of fact.
- (b) A sewer may be made for profit though made purely for sanitary purposes, and not, e.g. for securing a profit by disposing of the sewage.
- (c) The fact that a sewer is made by a person developing a building estate in order to provide sanitation for the houses does not in itself constitute sufficient evidence that it was made for profit.
- (d) On the other hand, if a sewer is made by a person (other than the developer of the estate) who had purchased the right to construct it with the object of turning the right to account, it is made for profit.

Sewers made by any person for his own profit, or for draining or irrigating private land, or made under the authority of any body having powers for the drainage of land, did not vest in the local authority under the Act of 1875, but the machinery of Sect. 17 of the 1936 Act now applies whether the sewer is made for profit or not.

**Vesting of Sewers and Sewage Disposal Works.** The provisions of Sect. 17 are as follows—

- (1) A local authority may at any time declare any sewer or sewage disposal works to be vested in them. An authority who propose to make a declaration of vesting shall give notice of their proposal to the owner or owners, and shall take no further action until either two months have elapsed without an appeal or until the appeal has been determined.
- (2) The owner, or any of the owners, of any sewer or sewage disposal works with respect to which a local authority might have made a declaration under the preceding subsection may make an application to that authority requesting them to make such a declaration with respect thereto.

(3) If an owner is aggrieved by the refusal of the local authority to make a declaration he may appeal to the Minister at any time after receipt of notice of their refusal, or if no such notice is given to him, at any time after the expiration of two months from the making of his application. In determining the appeal, the Minister may specify conditions, including conditions as to the payment of compensation by the local authority, and direct that the declaration shall not take effect, unless conditions so specified are accepted.

(4) The local authority and, on appeal, the Minister, in considering whether a declaration should be made, shall consider, where the owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(5) Any person who immediately before the making of a declaration was entitled to use the sewer shall be entitled to use it, or any sewer substituted therefor, to the same extent as if the declaration had not been made.

(6) A declaration or any application under this section may be made with respect to a part only of a sewer.

(7) Provision is made for dealing with the case of sewers or disposal works which are within the district of one local authority but serve that of another.

(8) Where a local authority have made a declaration with respect to a sewer within the district of another local authority they shall forthwith give notice of the fact to that other authority.

(9) Sewers vested in any other authority, council, board or statutory undertakers may not be taken over except at their request, subject to qualifications.

**Power of Local Authorities to Agree to Adopt Sewer or Drain or Sewage Disposal Works at a Future Date.** A local authority may agree to adopt on satisfactory completion, or at some future date, any sewer, sewage disposal works or drain which has become a sewer. This power is subject to the qualification that where the sewer, drain or works are situate within the district of another local authority or within a metropolitan borough, the agreement shall not be made until that authority or council has agreed to it, or the Minister has dispensed with the requirement. (Sect. 18.)

**Power of Local Authority to Require Proposed Sewer or Drain to be so Constructed as to Form Part of General System.**

(1) The local authority may require a proposed sewer or drain to be so constructed as to form part of a general system. A person aggrieved may appeal to the Minister within twenty-eight days.

(2) An authority who exercise the powers conferred upon them

by this section shall repay to the person constructing the drain or sewer the extra expenses reasonably incurred by him in complying with their requirements.

(3) If any person contravenes the provisions of this section he shall be liable to a fine not exceeding £50, but without prejudice to the right of the authority to avail themselves of any other remedy.

(4) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by a railway company or dock undertakers in or on land which belongs to them or is used by them for the purposes of their undertaking. (Sect. 19.)

**Vesting of Public Sewers and Sewage Disposal Works in Local Authority.** Sewers completed before the commencement of the Act are dealt with in Sects. 20 and 24.

Sect. 20 enumerates the types of sewers which are to vest, or to continue to vest, in the local authority and designates them as "public sewers."

The opening words of subsection (1) maintain the *status quo* by providing that all sewers and disposal works vested in a local authority on the 1st October, 1937, shall continue to be vested in them.

Those which are not vested, e.g. existing sewers made for profit, will remain in private ownership, until the procedure laid down in the Act for making them public sewers is complied with.

There shall also vest in the local authority—

(1) combined drains which were such only by virtue of some local Act and which otherwise would have been vested in the local authority under the provisions of the Public Health Act, 1875;

(2) all sewers and sewage disposal works constructed by the local authority;

(3) any sewers properly constructed as part of private street works except sewers which vest in a county council as the highway authority for county roads;

(4) all sewers and sewage disposal works which have been adopted by a declaration of the local authority.

**Agreements with the County Council** for the use of highway drains and sewers for sanitary purposes, or to allow public sewers to be used for drainage of highways are provided for in Sect. 21.

**Power to Alter, or Close, Public Sewers** vested in them is granted to a local authority in Sect. 22.

**General Duty of Local Authority to Maintain Public Sewers.** It is the duty of every local authority to maintain, cleanse and empty all public sewers vested in them, subject, however, to their right under Sect. 24 to recover in certain cases the expenses

or a part of the expenses, incurred by them in maintaining a length of a public sewer. (Sect. 23.)

**Power of Local Authority to Recover Cost of Maintaining Certain Lengths of Public Sewers.** Special provisions apply to any length of a public sewer, being either a length

(a) for the maintenance of which persons other than the local authority were, immediately before the commencement of the Act, viz. 1st October, 1937, responsible either by virtue of an order made under some enactment relating to combined drains or of an agreement; or

(b) which was vested in the local authority immediately before the commencement of the Act, but was not constructed

(i) at their expense; or

(ii) at the expense of any authority whose successors they are; and

(iii) which lies in a garden, court or yard belonging to any of the premises served by the sewer or common to any two or more of them; or

(iv) lies in a roadway, footway, passage or alley which affords access from a highway to those premises or any of them, but is not itself a highway.

(1) In such a case, the authority can recover the cost of maintenance from the owners of the premises served by the length of sewer, and any necessary apportionment may be made between different owners.

(2) If a local authority not only maintain but improve or enlarge such a sewer, the authority will be required to pay the cost of enlargement, and since an apportionment of future maintenance expenses would become increasingly difficult as time goes on, the subsection provides that the future responsibility for maintenance is to lie with the local authority.

(3) The owner has a right of appeal to a court of summary jurisdiction on questions arising under the section.

(4) So much of any local Act as relates to the liability for the repair of a single private drain connecting two or more houses with a public sewer is repealed. (Sect. 24.)

**Buildings not to be Erected without Consent over Sewer or Drain shown on Deposited Plan.** If it is proposed to erect any building or building extension over a sewer or drain which is shown upon the local authority's deposited map of sewers, the plans showing this proposal must be rejected by the authority unless they are satisfied that consent (which may be conditional or unconditional) would be proper. If, before the commencement of this Act, a building has been erected over a sewer without such consent, if any, as under the Public Health Act, 1875, Sect. 26,

was required at the date of the erection of the building, the local authority may by notice require the owner of the building to pull it down or to alter it in such manner as may be necessary. (Sect. 25.)

**Local Authority to Afford Facilities for Factories to Drain into Public Sewers.** A local authority shall give facilities for enabling manufacturers within their district to carry the liquids from their factories or manufacturing processes into a public sewer vested in the authority. Provided that nothing in this section shall be construed as requiring an authority—

(a) where separate sewers are provided for foul water and for surface water, to admit any such liquid into a sewer provided for surface water only; or

(b) to admit into their sewers any liquid which would prejudicially affect the sewers, or the treatment or disposal of the contents of the sewers, or would, from its temperature or otherwise, be prejudicial to health; or

(c) to give such facilities as aforesaid where their sewers or sewage disposal works are only sufficient for the requirements of their district or as affecting the provisions of Sect. 27. (Sect. 26.)

See now Public Health (Drainage of Trade Premises) Act, 1937.

**Certain Matters not to be Passed into Public Sewers.** A penalty not exceeding £10, together with a daily penalty not exceeding £5, can be imposed on any person who wilfully or negligently allows certain deleterious matters including any "petroleum spirit" or carbide of calcium to enter the sewer. This includes all forms of petrol. (Sect. 27.)

**Communication of Sewers with Sewers of Another Sewerage Authority.** (1) A sewerage authority may, by agreement with another sewerage authority, and with the approval of the Minister, cause any sewer vested in them to communicate with a sewer of, or to discharge into sewage disposal works of, that other authority in such manner and on such terms, as may be agreed between the authorities.

(2) This section extends to London so far as to enable agreements to be made thereunder between a sewerage authority in London and a sewerage authority outside London. (Sect. 28.)

**Land Held for Treating Sewage.** Such land may be managed by the local authority themselves or let by them on lease for a period not exceeding twenty-one years, provided the lease stipulates that all sewage brought to the land is effectively disposed of without nuisance. (Sect. 29.)

Sewage, etc., to be Purified before Discharge into Streams, Canals, etc. Sewage or filthy water must not be discharged into any natural stream, watercourse, canal, pond, or lake, until it has been purified. (Sect. 30.)

**Local Authority not to Create any Nuisance.** A local authority must so discharge their functions in respect of sewerage and sewage disposal as not to create a nuisance. (Sect. 31.)

Where damage results from action under statutory powers, compensation may be recovered. In other cases the remedy is action for damage or an injunction to restrain.

**Duty of Local Authority to Keep Map Showing Public Sewers, etc.** A map must be kept at the offices of a local authority for inspection by any person at all reasonable hours free of charge, and must show and distinguish all sewers and drains within their district which are—

- (a) public sewers ;
- (b) sewers with respect to which a declaration of vesting has been made under this Part of this Act but has not yet taken effect ;
- (c) sewers or drains with respect to which an agreement to make such a declaration in the future has been entered into. (Sect. 32.)

**Application of Improvement of Land Act, 1864.** Works for the supply of sewage to land for agricultural purposes shall be deemed to be an improvement of land, and the provisions of that Act shall apply accordingly. (Sect. 33.)

**Right of Owners and Occupiers within District to Drain into Public Sewers.**

(1) The owner or occupier of any premises or the owner of any private sewer is entitled to have his drains or sewer to empty into the public sewer if he gives notice of his intention so to do and complies with the local regulations. Among the limitations of this right are—

- (a) to discharge directly or indirectly into any public sewer—
  - (i) any liquid from a factory other than domestic sewage or surface or storm water,
  - (ii) or any liquid from a manufacturing process ; or
- (b) foul water into a sewer provided for surface water ; or
- (c) to have his drains or sewer made to communicate directly with a storm water overflow sewer. (Sect. 34.)

If the local authority does not elect to execute sewer connections (see Sect. 36), every person making one must give reasonable notice before commencing any work to the person authorized to superintend its execution, and afford all reasonable facilities for such superintendence.

**Use of Public Sewers by Owners and Occupiers without District.**

(1) The owner or occupier of any premises and the owner of any private sewer without the district of a local authority shall have the like rights with respect to drainage into the public sewers of that authority as he would have under the last preceding section if his premises or sewer were situated within the district. The local authority may specify the terms and conditions.

(2) A person aggrieved may have his application determined by a court of summary jurisdiction or he may require it to be referred to arbitration.

(3) The local authority may defray any expenses incurred by such person. (Sect. 35.)

**Right of Local Authority to Undertake the Making of Communications with Public Sewers.** When a person gives notice to the local authority of his intention to make a drain communicating with a sewer the local authority instead of supervising the work by their surveyor may carry out the work themselves and recover the cost from the owner or occupier. Before executing the work the local authority may require the estimated cost to be prepaid. (Sect. 36.)

**New Buildings to be Provided with Any Necessary Drains, etc.**

(1) It is unlawful to erect or build any house within the district of a local authority unless and until it has been provided with drainage to the satisfaction of the local authority.

The expression "drainage" includes the conveyance by means of a sink or other necessary appliance, or refuse water and the conveyance of rain water from roofs.

When a person has constructed a house without proper drainage the local authority may, in default of the owner, lay or remake the drain themselves and recover the expenses in a summary manner.

In order to give additional protection to owners of property, the section enables a local authority to reject plans for buildings where they consider that satisfactory provision is not made for drainage.

(2) A right of appeal lies to a court of summary jurisdiction where any difference arises as to whether provision for drainage might be dispensed with, or whether any proposed provision for drainage ought to be accepted by the authority as satisfactory.

Under the present section, though the local authority may insist on drainage into a sewer, or into a cesspool or some other place, the cesspool or other place need not be one approved by them.

(3) The local authority may require a building not effectually drained to be drained into a public sewer if there is one within *one hundred feet* of the site of such building; if the sewer is a greater distance away, then the drain may empty into a covered



cesspool which does not constitute a nuisance or is not injurious to health.

(4) If in the opinion of the local authority it would cost more to lay drains to the sewer within the said distance of one hundred feet than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer and may apportion the expenses among the owners of the several houses and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses. (Sect. 37.)

#### **Drainage of Buildings in Combination.**

(1) Where a local authority might under the last preceding section require each of two or more buildings to be drained separately into an existing sewer, but it appears to the local authority that the buildings might be drained more economically or advantageously in combination, the authority may, when the drains are first laid, require that the buildings be drained in combination into the existing sewer by means of a private sewer to be constructed either by the owners of the buildings in such manner as the authority may direct, or, if the authority so elect, by the authority on behalf of the owners. This does not apply, except with the consent of the owners, to any building whose plans have already been passed.

(2) A local authority who make such a requirement must fix the proportions in which the expenses of constructing, maintaining, and repairing are to be borne by the owners concerned, or where the distance from the sewer exceeds one hundred feet, the proportions in which the expenses are to be borne by the owners and the local authority. An owner has a right of appeal to a court of summary jurisdiction.

(3) A sewer constructed by a local authority under this section shall not be deemed to be a public sewer.

(4) So much of any local Act as empowers a local authority to require in certain cases the construction of a combined drain is hereby repealed. (Sect. 38.)

#### **Provisions as to Drainage, etc., of Existing Buildings.**

(1) If the local authority are satisfied as respects any building that

- (a) satisfactory provision has not been made for drainage; or
  - (b) any cesspool, drain, soil pipe, spout or sink; or
  - (i) any cesspool or other work or appliance provided; or
  - (ii) any cesspool, etc., formerly used for the building
- is a nuisance or prejudicial to health

they shall by notice require the owner to make satisfactory provision for the drainage of the building.

(2) In any such case Subsect. (3) and (4) of Sect. 37 of this Act which lays down certain conditions in respect of new buildings, applies.

(3) A building which belongs to any statutory undertakers is excepted from the provision of this section apart from houses, offices and showrooms not forming part of a railway station. (Sect. 39.)

**Provisions as to Soil Pipes and Ventilating Shafts.** Pipes conveying rain water from roofs shall not be used for conveying the drainage from any sanitary convenience. The soil pipe of every water closet must be properly ventilated. Surface water pipes must not be used as ventilation shafts. If any of these defects occur upon premises, the local authority may by notice require the owner or occupier to remedy them. The section now includes special protection for statutory undertakers. (Sect. 40.)

**In Urban District Notice to be Given of Intention to Repair, Reconstruct or Alter Underground Drains.** Any person is prevented from carrying out any alteration or reconstruction of any underground drain without giving twenty-four hours' notice to the local authority (except in emergencies). (Sect. 41.)

**Power of Local Authority to Alter the Drainage System of Premises.**

(1) A local authority may alter at their own expense the drainage system of premises which is operating efficiently, if that system is not adapted to the general sewerage system of the district, or is otherwise objectionable to the authority.

(2) The alternative drain or sewer which the local authority must first provide must be not only equally effectual, but it must also be in a position equally convenient to the owner of the premises.

(3) A right of appeal to a court of summary jurisdiction is provided to the owner of the premises. (Sect. 42.)

**Public Health (Drainage of Trade Premises) Act, 1937,** has for its object the improvement of the purity of streams and rivers as recommended by the Joint Advisory Committee appointed in April, 1930. The Act provides for local authorities to take and dispose of trade effluents, separate sewers being constructed if necessary, for traders to have a right to discharge their effluents into the sewers of local authorities, and for the preliminary treatment of these effluents, where necessary.

**Sewering of Private Streets.** The powers of local authorities to compel sewerage of private streets are contained in the Public

Health Act, 1875 (Sect. 150); or, where adopted, the Private Street Works Act, 1892. (See Chapter XVIII.)

## SANITARY CONVENIENCES FOR BUILDINGS

### BUILDINGS

Although the Act of 1936 does not contain a definition of the word "building," it vests in local authorities extensive powers to make by-laws regulating the planning and erection of buildings, both as regards their stability and sanitary arrangements.

**Closet Accommodation to be Provided for New Buildings.** Plans of a building or an extension of a building deposited with a local authority must show sufficient and satisfactory closet accommodation consisting of one or more water-closets or earth-closets. The local authority may not, however, insist on a water-closet unless a sufficient water supply and sewer are available. It may be noted that under Sect. 60 a local authority may be required to have building by-laws relating to, *inter alia*, sanitary conveniences, so that owners ought not to be left in doubt as to the attitude of local authorities.

Appeal lies to a court of summary jurisdiction. (Sect. 43.)

**Buildings having Insufficient Closet Accommodation, or Closets so Defective as to Require Reconstruction.** If it appears to a local authority

(a) that any building is without sufficient closet accommodation; or

(b) that any closets are in such a state as to be unsatisfactory and cannot without reconstruction be put into a satisfactory condition,

the owner can be required to do what is necessary to provide additional closets or to put the existing closets into a proper condition, as the case may be. The authority are entitled under the section to require the substitution of a water-closet for an existing earth-closet, if a sufficient water supply and sewer are available. New closets provided under the section would have to conform with the requirements of the current by-laws. (Sect. 44.)

**Buildings having Defective Closets Capable of Repair.** If it appears to the local authority that any closets are in an unsatisfactory state, but can be put right without reconstruction, the owner can be required to do what is necessary to cure the defect, but this will not necessarily involve bringing the closet up to by-law standard. (Sect. 45.)

**Sanitary Conveniences in Factories, Workshops, and Workplaces.** Every building which is used as a factory, workshop, or workplace shall be provided with sufficient and satisfactory

accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in, or in attendance at, the building, with sufficient and satisfactory separate accommodation for persons of each sex. (Sect. 46.)

Factories are now regulated in this respect by the Factories Act, 1937.

**Replacement of Earth-closets, etc., by Water-closets at Joint Expense of Owner and Local Authority.** Sect. 47, which replaces Sect. 39 (4) of the Public Health Act, 1907, deals with the case in which a sufficient water supply and sewer are available, and the authority consider that as a matter of policy the existing closets should be replaced by water-closets, notwithstanding that they are not a nuisance or injurious to health or insufficient in number. In this case, as under the existing law, the expense is to be shared equally between the authority and the owner. But the provision as to the non-application of the provisions relating to slop-closets has not been reproduced, and slop-closets have been placed on the same footing as earth-closets and privies. Also, for the purposes of conversion, pail-closets have been put on the same footing as earth-closets and privies, so that the local authority must bear half the cost of conversion. (Sect. 47.)

#### **SUPPLEMENTAL PROVISIONS AS TO DRAINS, SANITARY CONVENIENCES, CESSPOOLS, ETC.**

**Power of Local Authority to Examine and Test Drains, etc., Believed to be Defective.** This applies where there is reason to believe that the drain, sewer, etc., is prejudicial to health or a nuisance. (Sect. 48.)

**Rooms over Closets of Certain Types, or over ashpits, etc.,** are not to be used as living, sleeping or work rooms, subject to a penalty of £5 and a further fine not exceeding 40s. for each day on which the offence continues after conviction therefor. (Sect. 49.)

**Overflowing and Leaking Cesspools** may be dealt with by the local authority serving a notice requiring the soakage or overflow to be dealt with by the person responsible. (Sect. 50.)

**Care of Closets.** The occupier of every building provided with a water-closet shall provide adequate flushing apparatus and protection against frost and in the case of an earth-closet cause to be kept supplied dry earth or other suitable deodorizing material. (Sect. 51.)

**Care of Sanitary Conveniences Used in Common** by members of two or more families is provided for including joint and several responsibility and penalties for failure to carry out the requirements of Sect. 52.

## PROVISIONS WITH RESPECT TO BUILDINGS

Special Provisions as to Buildings Constructed of Short-lived Materials. Sect. 53 provides that—

(1) Where plans of a building are in accordance with building by-laws deposited with a local authority, and the plans show that it is proposed to construct a building of materials which in the absence of special care are liable to rapid deterioration, or to place or assemble on the site a building constructed of such materials, the authority may, notwithstanding that the plans conform with the by-laws either—

(i) reject the plans; or

(ii) in passing the plans, fix a period on the expiration of which the building must be removed.

(2) If a building in respect of which plans ought under the building by-laws to have been deposited, but have not been deposited, appear to the local authority to be constructed of such materials as aforesaid, the authority, without prejudice to their right to take proceedings in respect of contravention of the by-laws, may fix a period on the expiration of which the building must be removed and, where they fix such a period, shall forthwith give notice thereof to the owner of the building.

(3) The period fixed may be extended from time to time.

(4) An appeal lies to a court of summary jurisdiction.

(5) The owner of any building in respect of which a period has been fixed shall, on the expiration of the period, remove the building, and, if he fails to do so, the local authority shall remove it and may recover from him the expenses reasonably incurred by them in so doing, and, without prejudice to the right of the authority to exercise that power, he shall be liable to a fine.

(6) A person who uses a building in contravention of this section shall be liable to a fine of £10 and a further fine not exceeding £5 for each day of continuing offence.

(7) A local authority may by their building by-laws provide that the provisions of this section shall extend to buildings constructed of any materials specified in the by-laws, being materials which though not liable to rapid deterioration are declared by the by-laws to be unsuitable for use in the construction of permanent buildings.

(8) The provisions of this section shall apply in relation to any extension of an existing building as they apply in relation to a new building.

**Power to Prohibit Erection of Buildings on Ground filled up with Offensive Material.**

(1) The local authority shall reject the plans in such cases unless they are satisfied that the material in question had been removed or has become innocuous.

(2) Appeal lies by the person by whom or on whose behalf plans are deposited to a court of summary jurisdiction. (Sect. 54.)

**Means of Access to Houses for Removal of Refuse, etc.** The provision as to means of access for removal of refuse, etc., is not to apply to buildings erected in connection with housing operations under Sect. 138 of the Housing Act, 1936. (Sect. 55 (i).)

**Yards and Passages to be Paved and Drained.** The local authority may require provision to be made with respect to the paving of yards and open spaces in connection with dwelling-houses. (Sect. 56.)

**Yard Entrances not to be Closed or Restricted.** The entrance to any court or yard on which two or more houses front or abut shall not be closed, restricted or built over so as to obstruct proper ventilation of the houses without consent of the local authority. (Sect. 57.)

**Dangerous or Dilapidated Buildings and Structures.**

(1) If any building or structure, or part of a building or structure in the opinion of the local authority—

(a) is dangerous to the persons in the building, or any adjoining building; or

(b) is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood, the authority may apply to a court of summary jurisdiction for an order as provided by Sect. 58 (1).

(2) If the person on whom the order is served fails to comply with it within the time specified, the local authority may execute the order and recover the expenses.

(3) If a local authority is satisfied that any building or structure is dangerous and immediate action should be taken, the local authority may shore up or fence the building and recover the expenses from the owner. (Sect. 58.)

(*Rex v. Recorder of Bolton, ex parte Mc Vittie* (1939), All E.R.)

**Exits, Entrances, etc., in the Case of Public and Other Buildings.** This applies to any theatre, church, club and any school not exempted from the operation of building by-laws (e.g. it applies to private schools). (Sect. 59.)

**Means of Fire Escape from High Buildings.** This provision applies to buildings of more than two storeys in which there is a floor more than twenty feet above ground level and which are—

(1) let as flats or tenements;

(2) used as inns, hotels, boarding houses, hospitals, nursing homes, and similar institutions;

(3) used as restaurants, shops, stores or warehouses, and having on any upper floor sleeping accommodation for employees.

The local authority may by notice require of the owner any such means of escape from each storey, in case of fire, as the authority deems necessary. (Sect. 60.)

## BY-LAWS WITH RESPECT TO BUILDINGS AND SANITATION

The general provisions as to by-laws of local authorities contained in the Local Government Act, 1933, Part XII are supplemented by this Part of the Act. See also Chapter I.

The subject matter for which by-laws may be approved under the Public Health Acts, includes—

### URBAN AND RURAL AUTHORITIES

- |                           |                                                     |
|---------------------------|-----------------------------------------------------|
| 1. Ashpits.               | 16. Pleasure grounds.                               |
| 2. Bathing.               | 17. Porters.                                        |
| 3. Cemeteries.            | 18. Privies                                         |
| 4. Cesspools.             | 19. Promenades.                                     |
| 5. Common lodging houses. | 20. Public baths.                                   |
| 6. Commons.               | 21. Public conveniences.                            |
| 7. Earth closets.         | 22. Public vehicle queues.                          |
| 8. Fruit pickers.         | 23. Seashores.                                      |
| 9. Fire prevention.       | 24. Servants registries.                            |
| 10. Hop pickers.          | 25. Sewers.                                         |
| 11. House refuse.         | 26. Shooting galleries.                             |
| 12. Lodging houses.       | 27. Slaughter houses.                               |
| 13. Mortuaries.           | 28. Smoke emission.                                 |
| 14. Nuisances from        | 29. Streets and buildings.                          |
| (a) animals;              | 30. Tents, vans and sheds.                          |
| (b) ashes;                | 31. Wires over streets.                             |
| (c) dust;                 | 32. Washhouses.                                     |
| (d) filth;                | 33. Waste water.                                    |
| (e) offensive matter;     | 34. Wells, tanks and cisterns.                      |
| (f) rubbish;              | 35. Working-class houses.                           |
| (g) snow.                 | 36. Markets.                                        |
| 15. Open spaces.          | 37. Licensing horses, mules,<br>and pleasure boats. |

### URBAN AUTHORITIES ONLY

- |                       |                                          |
|-----------------------|------------------------------------------|
| 1. Cabmen's shelters. | 4. Places of public resort.              |
| 2. Hackney carriages. | 5. Street obstructions and<br>nuisances. |
| 3. Offensive trades.  |                                          |

A by-law may be altered or repealed by a subsequent by-law.

Sect. 251 of the Local Government Act, 1933, provides that upon summary conviction a penalty of not more than £5 for a single offence against by-laws or, in the case of a continuing offence, a further penalty of 40s. for each day during which the offence is continued.

Sect. 252 of the Act provides that the production of a printed copy of a by-law purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the clerk of the authority shall be *prima facie* evidence of the facts stated in the certificate.

## BY-LAWS AS TO BUILDINGS AND SANITATION

THE PUBLIC HEALTH ACT, 1875. Every urban district council has power to make by-laws with respect to the level, width, and construction of new streets, and provisions for the sewerage thereof. (Sect. 157.)

THE PUBLIC HEALTH ACT, 1936. This Act gives extensive powers for the making and administration of by-laws by a local authority and provides—

(1) Every local authority may and, if required by the Minister, shall make by-laws for regulating all or any of the following matters—

(i) as regards buildings—

(a) the construction of buildings, and the materials to be used in the construction of buildings;

(b) the space about buildings, the lighting and ventilation of buildings, and the dimensions of rooms intended for human habitation;

(c) the height of buildings, the height of chimneys, not being separate buildings, above the roof of the buildings of which they form part;

(ii) as regards works and fittings—

(d) sanitary conveniences in connection with buildings, the drainage of buildings, including the means for conveying refuse water and water from roofs and from yards appurtenant to buildings; cesspools and other means for the reception or disposal of foul matter in connection with buildings.

(e) ashpits in connection with buildings;

(f) wells, tanks, and cisterns for the supply of water for human consumption in connection with buildings;

(g) stoves and other fittings in buildings, not being electric stoves or fittings, in so far as by-laws with respect to such



matters are required for the purposes of health and the prevention of fire;

(h) private sewers; communications between drains and sewers and between sewers.

(2) Publication of building by-laws in the *London Gazette* is required at least one month before applying to the Minister of Health for confirmation. (Sect. 61.)

**Application of Certain By-laws to Existing Buildings.** (1) By-laws affecting particular appliances, such as sanitary conveniences, should operate whenever the appliance is replaced by a new one.

(2) A by-law which deals with the structure of a building must not affect existing buildings at the date when it is made, so long as the building continues to be used for the purpose for which it was erected.

The expression "existing" means erected before the date on which the by-law in question came into force. (Sect. 62.)

**Relaxation of By-laws.** Where the local authority consider that the operation of the building by-laws in force in their district would be unreasonable in relation to any particular case they may, with the consent of the Minister waive compliance there-with. This provision is new. (Sect. 63.)

#### **Passing or Rejection of Plans, and Power to Retain Plans, etc.**

(1) The local authority must pass or reject plans deposited in accordance with building by-laws within the prescribed period.

(2) The authority must within the prescribed period give notice to the person by whom or on behalf of whom the plans were deposited and

(i) a notice of rejection must specify the defects on account of which, or the by-laws or section of this Act for non-conformity with which or under the authority of which the plans have been rejected; and

(ii) a notice that the plans have been passed must state that the passing of the plans operates as an approval thereof only for the purposes of the requirements of the by-laws and of any such section of this Act which expressly requires or authorizes the rejection of plans.

(3) Appeal lies by the person concerned to a court of summary jurisdiction.

(4) Prescribed period in relation to the passing or rejection of plans means one month or, in certain cases, five weeks.

(5) Building by-laws may require that plans and other documents to be deposited in duplicate under the by-laws shall be

deposited in duplicate and if the by-laws contain such a requirement, the local authority may retain one copy of any plans or other documents so deposited, whether or not the plans are passed. (Sect. 64.)

**Removal of Alteration of Work not in Conformity with By-laws, or Executed Notwithstanding Rejection of Plans, etc.** The owner may be required to pull down or remove such works, or in the event of default after the expiration of twenty-eight days (or any longer period allowed by a Court of Summary Jurisdiction on appeal) the local authority may do so and recover from the owner the expenses reasonably incurred by them in so doing. Nevertheless, the right of a local authority, or of the Attorney-General or any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any by-laws or any enactment is not affected. (Sect. 65.)

**Deposit of Plans to be of No Effect after Certain Intervals.** The period is normally three years from the deposit of the plans, provided the local authority gives notice of this circumstance to the owner or person depositing the plan.

Nothing in this Act affects the operation of the Public Health Acts Amendment Act, 1907, Sect. 15, which made the provisions apply only when operating under an order of the Minister, or any corresponding provision of a local Act. (Sect. 66.)

**Power to Refer Questions Arising Under Building By-laws to the Minister.** On a joint application of the person concerned and the local authority, questions arising concerning—

(1) the extent of the application of building by-laws to any work;

(2) the work being in conformity with the by-laws; and

(3) the work having been executed in accordance with the plan as approved by the local authority;

may be referred to the Minister. The Minister's decision is final, but he may and shall, if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in those proceedings. (Sect. 67.)

**Temporary Operation of Building By-laws.** (a) Building by-laws shall cease to have effect on the expiration of ten years from the date on which made. The Minister may by order extend the period during which a by-law is to remain in force. This latter provision does not conflict with the general principle, since the decision to extend the life of a by-law would compel consideration of the question whether the by-law was still appropriate.

(b) Building by-laws made by a local authority under an existing enactment ceased to have effect three years from the passing of this Act. (Sect. 68.)

**Power of the Minister to Make Building By-laws in Case of Default, and to Revoke Unreasonable By-laws.** If the Minister is satisfied that the erection of any building is likely to be unreasonably impeded in consequence of any building by-laws, he may require the local authority to revoke those by-laws and may make by-laws on default of local authority. (Sect. 69.)

**Certain Information and Copies of Certain Local Enactments.** Section 70 prescribes certain information which must be appended to printed copies of building by-laws.

**Exemption of Certain Buildings from Building By-laws.** Building by-laws do not apply to buildings—

- (a) approved by the Minister of Education; or
- (b) approved by the Minister of Agriculture and Fisheries under the Small Holdings and Allotments Acts, 1908 to 1931, or any Act amending those Acts; or
- (c) any buildings belonging to any statutory undertakers and held or used by them for the purposes of their undertaking except houses, offices and showrooms not forming part of a railway station. (Sect. 71.)

#### REMOVAL OF REFUSE, SCAVENGING, KEEPING OF ANIMALS, ETC.

This constitutes an important feature of public health administration. The methods of disposal include direct incineration by refuse destructors, pulverization, tipping at sea or in tidal waters, supply to farmers for fertilization and controlled tipping which has the support of the Ministry of Health.

**Removal of House Refuse, Cleansing of Ashpits, etc.** A local authority may, and if required by the Minister shall undertake the performance of all or any of the following services that is to say—

- (a) the removal of house refuse;
- (b) the cleansing of earth closets, privies, ashpits, and cesspools or any of them;

in any case, as respects either the whole or any part of their district. (Sect. 72.)

It has been suggested that the expressions "house refuse" and "trade refuse" should be clearly defined. Definitions of these terms were contained in the corresponding provisions of the Public Health (London) Act, 1891, and are also contained in the Public Health (London) Act, 1936. But in spite of this and a considerable amount of case law on the subject—e.g. *London and Provincial Laundry Co. v. Willesden L.B.*, [1892] 2 Q.B. 271; 67 L.T. 499; *St. Martins Vestry v. Gordon*, [1891] 1 Q.B. 61; *Westminster Corporation v. Gordon Hotels, Ltd.*, [1906] 2 K.B. 39

—there is still considerable difficulty in determining whether particular refuse falls into one category or the other. The broad effect of the London definitions as judicially interpreted seems to be that in deciding whether refuse is to be treated as house refuse the character rather than the origin of the refuse must be looked at.

The matter was considered by a Departmental Committee on London Cleansing in 1930 (Cmd. 3613). They stated—

“The situation is complicated by the decisions of the Courts that the refuse of hotels and restaurants is mainly house and not trade refuse. We are of opinion that payment at cost should be made for collecting the refuse arising from the carrying on of any trade or business, except where it is collected from small premises with the house refuse and is negligible in quantity. Regarding the matter from this point of view, the preferential treatment accorded to hotels and restaurants in consequence of the judicial decisions is difficult to defend. We consider that they should be placed on the same footing as other businesses.”

The Local Government and Public Health Consolidation Committee gave much consideration to this matter, and in particular to the question whether an attempt should be made to draft a definition which would secure that whatever the character of the refuse it should be treated as trade refuse if it resulted from trading or industrial processes. In this connection various local Act definitions were considered. Somewhat reluctantly, however, they arrived at the conclusion that none of the various attempts at definition was free from serious difficulty and that, if any alteration was to be made in the existing law, it would probably be on more fundamental lines than would be justifiable in their draft Bill. Accordingly, the terms “house refuse” and “trade refuse” are used in Sects. 72 and 73, as they are in the existing Acts, without definition, and the case law remains applicable.

**Removal of Trade Refuse and Other Matters.** Removal of trade refuse by a local authority is optional, but the local authority no longer has a discretion as to making a charge for the removal of trade refuse. The authority *shall* make reasonable charges for removing such refuse. (Sect. 73.)

**Power of Local Authority in Certain Cases to Remove Refuse or Cleanse Cesspools, etc., on Behalf of Occupier.** (1) A local authority may make a charge for any general collection of refuse which they are under no obligation to remove.

(2) A local authority may at the request of the owner or occupier dispose of any refuse which may be delivered to them and may make a charge for so doing. (Sect. 74.)

**Regulation Dustbins.** (1) A local authority may by notice require the owner or occupier of any building within the district to provide such number of covered dustbins of such material, size, and construction as the authority may approve.

(2) If a person fails to comply with a notice the authority may provide such dustbins as may be required and may recover the expenses reasonably incurred by them.

(3) In lieu of requiring the owners or occupiers to provide and maintain such dustbins, the local authority may do so and make in respect of each dustbin provided by them such annual charge not exceeding 2s. 6d. as they think proper. (Sect. 75.)

**Deposit and Disposal of Refuse.** Local authorities are empowered to provide—

(a) receptacles for refuse in streets and public places;

(b) places for the deposit of refuse;

(c) plant or apparatus for treating or disposing of refuse. They may sell refuse; whereas the pernicious practice of salving from rubbish by private persons is prohibited under a penalty of £5.

**Sweeping and Watering of Streets.** A local authority may, and if required by the Minister must, undertake the cleansing, and may undertake the watering of streets, as respects either the whole or any part of their district. (Sect. 77.)

**Scavenging of Common Courts and Passages.** These, not being highways, repairable by the inhabitants at large, may be cleansed by the local authority who may recover any expenses reasonably incurred by them. (Sect. 78.)

**Removal of Noxious Matter.** The owner or occupier of premises in an urban area can be required to remove noxious matter. The local authority in case of default may remove the same and recover the cost from the owner or occupier. (Sect. 79.)

**Periodical Removal of Manure, etc., from Stables, etc.** In urban areas the local authority, by serving public or other notice, may require the removal of manure and any person who defaults shall be liable to a fine not exceeding 20s. (Sect. 80.)

**Prevention of Certain Nuisances.** A local authority may make by-laws for preventing—

(a) the occurrence of nuisances from snow, filth, dust, ashes, and rubbish;

(b) the keeping of animals so as to be prejudicial to health. (Sect. 81.)

**Removal through Streets of Offensive Matter or Liquid.** A local authority may make by-laws (1) to prescribe the times for the removal; (2) to regulate the type of the receptacle or vehicle used therefor; (3) to requiring the cleansing of any place which may be fouled in the course of removal or carriage. (Sect. 82.)

## FILTHY OR VERMINOUS PREMISES OR ARTICLES AND VERMINOUS PERSONS

**Filthy or Verminous Premises.** Upon the certificate of the medical officer of health or the sanitary inspector, the owner or occupier must cleanse premises under a penalty of £5 and a continuing penalty of £2 per day after conviction. In default of the owner or occupier the local authority may cleanse and recover the cost.

**Filthy and Verminous Articles.** Upon the certificate of the medical officer of health or the sanitary inspector the local authority must cleanse or destroy any such article. (Sect. 84.)

**Cleansing of Verminous Persons and their Clothing.** (1) Upon the application of any person, a county council or a local authority may take such measures as are, in their opinion, necessary to free him and his clothing from vermin.

(2) The above authorities may take steps or a court of summary jurisdiction may order a person's removal to a cleansing station. No charge must be made under this section. (Sect. 85.)

**Provision of Cleansing Stations.** A county council or local authority may provide such cleansing stations as may be necessary for the discharge of their functions under any of the last three preceding sections. (Sect. 86.)

## PUBLIC SANITARY CONVENIENCES

A local authority is empowered to provide these. Where such conveniences could not be provided by a local authority except with the consent of the county council as highway authority, the county council may provide. Sanitary conveniences include lavatories for which county council or local authority may

(a) make by-laws as to the conduct of persons using and entering them;

(b) let them on such terms and conditions as they think fit;

(c) charge such fees for the use of any such conveniences as they think fit. (Sect. 87.)

**Control Over Conveniences in or Accessible from Streets.** The consent of the local authority is required and they may impose such terms as they think fit.

Appeal by a person aggrieved lies to a court of summary jurisdiction. (Sect. 88.)

**Sanitary Conveniences at Inns, Refreshment Houses, etc.** The local authority can enforce necessary provision and may require maintenance in a suitable position.

If any person fails to comply with a notice served under this section, he shall be liable to a fine not exceeding £5 and a further

fine not exceeding 40s. for each day on which the offence continues after conviction therefor. (Sect. 89.)

## GENERAL

### INTERPRETATION OF PART II

The revised definition of "water-closet" is important. "Water-closet" means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action. (Sect. 90 (1).)

All references to drains and sewers shall include and be applicable to appurtenant works, such as manholes, ventilating shafts, pumps, etc. Likewise, all references to sewage disposal works shall include machinery, pumping stations, etc.

**Meaning of "New Building."** For the purpose of by-laws the following operations shall be deemed to be the erection of a building—

1. The re-erection of any building (or part thereof) when an outer wall has been pulled or burnt down to within ten feet of the surface of adjoining ground.

2. The re-erection of any frame building (or part thereof) which has been so far pulled or burnt down as to leave only the framework of the lowest storey.

3. The roofing over of an open space between walls and buildings.

These definitions govern by-laws only in so far as the by-laws themselves provide, in order to overcome such difficulties as arose in the case of *Repton School (Governors) v. Repton R.D.C.* (1918), 2 K.B. 133.

## PART III

### NUISANCES AND OFFENSIVE TRADES

These are dealt with in Sects. 91 to 110.

### NUISANCES IN WORKPLACES

It is the duty of every local authority to cause their district to be inspected from time to time for the detection of nuisances. Statutory nuisances (which are those which may be dealt with summarily) are set out in Sect. 92. The powers and duties of the local authorities are dealt with in the succeeding sections of the Act. Provisions include smoke nuisances, including power of the local authority to investigate problems relating to atmospheric pollution. The subject is fully dealt with in Chapter IV of *The Law of Housing and Planning* (Pitman).

Nuisances in factories are now dealt with under the Factories Act, 1937, considered in detail in *Social Administration* (Pitman).

### OFFENSIVE TRADES

Restrictions are imposed on the establishment of offensive trades in urban districts for which by-laws may be enforced. (Sects. 107 and 108.)

## PART IV

### WATER SUPPLY

This Part determines the general duties and powers of local authorities with respect to water supplies within their districts. These provisions have been amended and extended by the Water Act, 1945, which is dealt with on page 261. It is the duty of the local authority to secure, as far as is reasonably possible, that every house and school has a water supply available.

Provision is also made for the vesting of public wells, pumps, etc., in the local authority; power is given to parish councils to utilize wells, springs, or streams within the parish for obtaining water.

Power is given to local authorities to prohibit the occupation of new houses without a sufficient water supply. Provision is also made for the protection of the public from polluted water; and power to deal with insanitary cisterns.

### GENERAL DUTIES AND POWERS OF LOCAL AUTHORITY

**Duty of Local Authority with Respect to Water Supplies within their District.** It shall be the duty of every local authority

(i) to take from time to time such steps as may be necessary for ascertaining the sufficiency and wholesomeness of the water supplies within their district; and

(ii) for the purpose of securing as far as is reasonably practicable that every house has available within a reasonable distance a supply of wholesome water sufficient for domestic purposes of the inmates—

(a) to provide a supply of water to every part of their district in which danger to health arises from the insufficiency or unwholesomeness of the existing supply and a general scheme of supply is required and can be carried out at a reasonable cost; and

(b) without prejudice to their obligations under the preceding sub-paragraph, to exercise their powers under this Part of this Act of requiring owners of houses to provide a supply of water thereto. (Sect. 111.)



Power is also given to local authorities who supply water under this Act for domestic purposes to supply water for any other purpose. (Sect. 112.)

**Purity of Water for Domestic Supply** must be secured by a local authority who supply water under this Act. (Sect. 115.)

## WATERWORKS AND OTHER SOURCES OF SUPPLY

**General Powers of Local Authority for Supplying District with Water.** A local authority *may* provide their district or any part thereof with a supply of water proper and sufficient for public and private purposes, and to that end may—

(i) construct, take on lease, or with the approval of the Minister purchase by agreement, waterworks;

(ii) with the approval of the Minister purchase by agreement any water, or right to take or convey water, or other rights, powers and privileges in relation to the supply of water, and in so far as it may be necessary for facilitating the supply of water, any water-mill, dam or weir;

(iii) with the approval of the Minister purchase by agreement the water undertaking of any statutory water undertakers;

(iv) give any such guarantee in respect of a supply of water as is authorized by any subsequent provision of this Part of this Act. (Sect. 116.)

A local authority is not liable for failure to provide water at a certain pressure in order to provide means for dealing with fires. (*Atkinson v. Newcastle Waterworks Co.*, 1877, 2 Ex. D. 441 and 36 L.T. 761.)

**Power of Water Undertakers to Supply Water or Sell or Lease to a Local Authority** will not now include a power to sell premises and other property, other than waterworks. (Sect. 122.)

**Public Wells, Pumps, etc.** Certain pumps, wells, cisterns, etc., vest in the local authority who may cause the works to be maintained and supplied with wholesome water or may substitute, maintain and supply with wholesome water other such works equally convenient. (Sect. 124.)

**Power of Parish Council.** (1) To utilize any wells, springs, or streams within their parish and provide facilities for obtaining water therefrom, and may execute any works, including works of maintenance or improvement, incidental to, or consequential on, any exercise of that power.

(2) To contribute towards the expenses incurred by any other parish council, or by any other person, in doing anything mentioned in the preceding subsection.

(3) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water. (Sect. 125.)

## CHARGES FOR WATER

A local authority supplying water is given a general power to make charges therefor. A water rate must be assessed upon the net annual value but a fixed minimum may apply in all cases. Supply by meter or other method may be made by agreement. A reasonable additional charge for the use of water in *any* fixed bath, and not merely in any fixed bath after the first, may be made. (Sect. 126.) In certain cases, such as for business purposes, institutions, clubs, hotels and boarding houses accommodating twelve or more persons, the local authority may require charge by metered supplies. This applies also to the method of charging for certain uses, such as for refrigeration, continuous supplies, and motive power. (Sect. 127.)

**Power to Charge for Water Supplied by Standpipes, etc.** The power to make a charge for water supplied by standpipes, etc., will not apply to a standpipe, well, or cistern vested in the local authority by Sect. 124 (1) or constructed by them under Sect. 124 (3). (See Sect. 126.)

**Water Rates on Small Tenements.** The owner of the premises may be charged if the premises are under £13 annual value and will be entitled to an allowance calculated at the same rate per cent as the allowance in respect of a general rate under Sect. 11 (1) (a) of the Rating and Valuation Act, 1925, as amended, i.e. 10 per cent temporarily increased to not exceeding 15 per cent. (Sect. 129.)

## POWER OF LOCAL AUTHORITY TO REQUIRE HOUSES TO BE SUPPLIED WITH WATER

**New Houses** must not be let for occupation without sufficient water supply as certified by the local authority as being sufficient for the domestic purposes. (Sect. 137.)

**Power to Require any Occupied House to be Provided with Sufficient Water Supply.**

(1) Where a local authority are satisfied—

(a) that any occupied house within their district is without a proper supply of water

(i) either in the house; or

(ii) within a reasonable distance thereof; and

(b) that such a supply ought to be provided by the owner; and

(c) that a supply can be furnished at a cost not exceeding the authorized water rate in the district, or if there is no authorized rate at a cost not exceeding 2d. a week, or at such

other cost as the Minister may determine to be reasonable, the authority may require the owner to obtain a supply, and on his default may do the necessary work at his expense.

(2) Where the local authority are so satisfied as aforesaid with respect to each of two or more houses they may give notice accordingly under the preceding subsection to the owners of all those houses.

(3) If such notice aforesaid is not complied with the local authority may themselves provide or secure the provision of a supply of water;

Provided that an owner shall not be required to pay more than twenty pounds in respect of any one house. (Sect. 138.)

### PROTECTION OF PUBLIC FROM POLLUTED WATER

If the local authority are of opinion that the water supplied from any source is, or is likely to be, so polluted as to be prejudicial to health they may apply to a court of summary jurisdiction for an order prohibiting the supply. In default of the owner or occupier the local authority may carry out the order and recover the cost from the person in default. (Sect. 140.)

### PROPOSALS FOR REFORM

In April, 1939, the Second Report of the Minister's Central Advisory Committee recommended that the general law regulating the supply of water by local authorities and water companies should be consolidated and modernized, and prepared for this purpose a draft Water Undertakings Bill. In April, 1944, a White Paper entitled "A National Water Policy" was published by the Government.

### RURAL WATER SUPPLIES AND SEWERAGE ACT, 1944

This Act authorizes the Minister of Health to make contributions in aid of the provision or the improvement of water supplies and sewerage in rural localities. Contributions may be in the form of a capital payment on the completion of works or by the payment of annual sums for a period of not more than twenty years towards the expenses incurred under any arrangements made with other bodies for the supply of water or the disposal of sewage.

Sect. 2 of the Act provides that where the Minister undertakes to make a contribution towards expenses incurred by the council of any borough, urban or rural district or by a joint board or joint committee, the county council in whose area the authority lies shall make a contribution towards the expenses of the authority. The amount of the contribution and conditions of

payment are to be settled by agreement between the county council and the authority, or in default by the Minister.

Sect. 3 extends the duty of the council of a borough, urban district or rural district to provide a piped supply of water to every rural locality in their district in which there are houses or schools. The obligation of the authority is limited to doing that which is possible at a reasonable cost.

Where statutory undertakers would not provide a supply of water to a rural locality because the water rates payable in respect of premises in the area would be less than a prescribed fraction of the cost of providing a supply, the local authority may give the undertakers a guarantee. The undertakers are required to accept the guarantee and bring water to the locality. (Section 5).

Sect. 6 provides that after 31st March, 1945, all expenses incurred by a rural district council in connection with sewerage, sewage disposal and water supply are to be general expenses.

### **WATER ACT, 1945**

A Bill was introduced into the House of Commons in February, 1945, and was passed into law as the Water Act, 1945.

Whilst many of the provisions of Part IV of the Public Health Act, 1936, have been repealed, others, mainly regarding public health requirements, have been left outstanding.

The Minister of Health has been made responsible for the water supplies of the country. To assist him and keep him informed in all relevant matters a Central Advisory Water Committee has been appointed. The Minister may set up Advisory Joint Committees for local regions to conduct surveys and make proposals regarding the joint use of resources and provide him with information thereon.

The expenses of these Committees will be met by the council of any county or county borough whose areas or part thereof, are included in the region, in the proportions agreed by them or fixed by the Minister in the absence of agreement.

The Minister may by Orders set up a Joint Water Board for any region upon application by water undertakers or on his own initiative.

The "fringe order" system, which operates in relation to electricity supplies, has been introduced into the system of water supplies and, under an Order from the Minister, undertakers may supply water to premises outside their statutory limits until, by giving three months' notice, the undertakers for the area take over the supply and repay the expenses of providing supplies under the fringe order.

The Minister may, by Order, authorize the provisions of bulk supplies on agreed terms or he may enforce such provision where he considers it necessary in the absence of a voluntary agreement.

The construction of waterworks can be authorized by an Order from the Minister and such an Order may amend even the provisions of local Acts. The Minister may fix the amount of compensation water to be provided where he considers it necessary.

The Minister may hold a local inquiry in any case where he considers an undertaker to be in default regarding his duties and if found necessary he may issue an Order requiring the remedy of matters in default. The fulfilment of statutory duties may be enforced by mandamus or the Minister may authorize a county council to carry out those duties or he may do so himself.

A licence is required from the Minister before water can be abstracted and records of such abstractions must be kept and be open to inspection by the Officers of the Minister. Penalties of up to £10 may be inflicted for wasting water during such abstractions.

The use of water through hosepipes or for washing vehicles can be prohibited by newspaper advertisement and fines up to £5 may be imposed for neglect to comply with such prohibitions.

Where supplies are required for non-domestic purposes they must be made on reasonable terms unless it can be shown that such supplies could be supplied only at an unreasonable cost. This also applies to piped supplies for houses and schools.

Fittings may be sold or supplied on hire and the cost recovered, if necessary, as a civil debt. Rating valuations must not be increased solely by reason of the provision of water fittings in premises.

Local authorities must reject building plans in respect of new houses as a means of enforcing the owner to lay on water supplies. Owners may appeal to a court of summary jurisdiction if they consider such a rejection to be unreasonable.

Owners may be required to contribute towards the cost of supplies for domestic purposes to the limit of one-eighth of the annual cost for a period of twelve years. As a security for the payment of contributions a deposit may be required from owners and interest at the rate of 4 per cent per year will be payable on such deposits.

Occupiers are liable for the payment of water rates unless the owner is responsible by any agreement or by statutory obligations.

Rates may be recovered as a civil debt in a court of summary jurisdiction and supplies may be cut if payment is not made after seven days demand. The Minister of Health may revise authorized charges and application for a revision may be made by 20 con-

sumers or, where they are not the undertakers, by the local authority.

The Third Schedule to the Act contains a code which will replace the provisions of the Waterworks Clauses Acts five years after the passing of the Act, or at an earlier date at the discretion of the undertaker.

## PART V PREVENTION, NOTIFICATION, AND TREATMENT OF DISEASE

This Part contains little that is new, but includes regulations for the prevention and treatment of infectious disease, etc.

### INFECTIOUS DISEASES

The prevention of infectious diseases and the accurately directed efforts to control disease, were previously dealt with in Sects. 120 to 130 of the Public Health Act, 1875, by which time scientific knowledge had become available, and when also men's consciences had become more sensitive than ever before to the sufferings of humanity.

The basis of public action as to infectious diseases—the germ theory of disease—is stated on page 291 in discussing the infection of food. All that need be added is that, when any person has had an infectious disease and has recovered, the body has set up a defensive mechanism and has acquired “immunity.” The majority of the bacteria are killed, but a minority remain, which will not attack the carrier, because of his acquired “immunity,” but which have lost none of their virulence for other persons. Accordingly, any person who has contracted an infectious disease remains a source of infection for some time after his recovery.

In attempting to check the spread of infectious diseases the precautions taken by local authorities are—

- (a) Notification is insisted upon.
- (b) Infected persons are isolated either in the home or in an isolation hospital.
- (c) The infected person's room, bedding, clothes, and books are disinfected.
- (d) Infant vaccination against smallpox is carried out compulsorily, but objectors may obtain exemption.

Notification, however, is still often neglected altogether: and many authorities are dilatory, neglectful, and parsimonious in developing schemes.

Diphtheria immunization is provided freely for school children.

The sanitary authority was responsible for enforcing regulations in accordance with the Infectious Diseases (Notification) Act,

1889; the Infectious Diseases (Prevention) Act, 1890; the Isolation Hospitals Act, 1893 and 1901; and the Public Health (Prevention and Treatment of Diseases) Act, 1913.

The Public Health (Treatment of Infectious Diseases) Regulations, 1934, provided that it should be the duty of local authorities to provide treatment for persons suffering from infectious diseases who are for the time being resident in their area.

**Advantages of Notification.** (a) To enable prompt precautionary measures to be taken against spread of infection (isolation, disinfection, etc.); (b) to facilitate inquiry into causes of, say, an epidemic of infectious disease; (c) to enable the Medical Officer of Health to keep statistics for transmission to the Ministry of Health as well as for comparative purposes.

### NOTIFIABLE DISEASES

"Notifiable disease" means, *inter alia*, any of the following diseases, viz. smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet fever, typhus, typhoid, enteric or relapsing fever, puerperal pyrexia, and includes, as respects any particular district, any infectious disease to which Part V of this Act has been applied by the local authority of the district in manner provided by that Part. (Sect. 343.)

The Minister of Health may issue an order extending the Act to other diseases. Any local authority may resolve to include other diseases subject to the approval of the Minister. For example, under these provisions the Act has been made to apply to plague, pulmonary tuberculosis, ophthalmia, neonatorum, and, at the request of the Army Council, to measles. (Sect. 147.)

**Power of Minister to Make Regulations with a View to the Treatment of Certain Diseases, and for Preventing the Spread of Such Diseases.** Regulations may apply, with or without modifications, to any disease to which the regulations relate and to any enactment relating to the notification of disease or to notifiable diseases. (Sect. 143 (1).)

### NOTIFICATION OF DISEASE

**Obligation to Notify Certain Diseases.** In the case of any building used for human habitation, as soon as he becomes aware that a patient is suffering from a notifiable disease, notice thereof must be sent to the Medical Officer of Health of the district in which the building is situate—

- (1) by the head of the family to which he belongs;
- (2) in his default by the nearest relative present or in attendance on him;
- (3) in default of such relatives, by every person in charge or in attendance on him;



- (4) in default of such persons, by the occupier of the building;
- (5) in addition, by the doctor attending the case.

This is done by doctors as part of their professional work and they are paid for it (normally 2s. 6d., except in the case of institution payments, when it is 1s.). The private individual (head of family, etc.) receives *no payment* for his notification, which is one of his duties as a citizen. Keepers of common lodging-houses are required to notify both the Medical Officer of Health and the relieving officer of any case of infectious disease occurring in such houses. Under the Food and Drugs Act, 1938, dairymen may be required to notify cases of infectious diseases occurring amongst their employees and may be requested to disclose the sources of their milk supply, and may be required to supply a list of customers.

### PROVISIONS FOR PREVENTING THE SPREAD OF INFECTION

The occupier of a building in which there has been a case of notifiable disease must, if required by the local authority, furnish them with the address of any laundry or other place to which articles from the premises have or will be sent. (Sect. 152 (3).)

The person in charge of a school where there has been a case of notifiable disease must, if required by the medical officer of health, send him a list of scholars with addresses. A fee of 6d. for every twenty-five names is payable.

Penalties, including a fine which is usually not exceeding £5, are imposed for contravention of the following restrictions—

(1) Exposure of persons and articles liable to convey a notifiable disease. (Sect. 148.)

(2) Carrying on an occupation to the danger of others. (Sect. 149.)

(3) Permitting a child to attend school after receiving notice to the contrary from the medical officer of health. (Sect. 150.)

(4) Failing to supply list of scholars upon request of medical officer of health. (Sect. 151.)

(5) Sending infected articles to laundry, public washhouse or cleaners unless disinfected. (Sect. 152.)

(6) Sending home work to premises where an order forbidding the same has been made by a local authority. (Sect. 153.)

(7) Selling or delivering any article to a person under 14 by persons dealing in rags, old clothes or similar articles. (Sect. 154.)

(8) Returning a library book from any public or circulating library when suffering from a notifiable disease. (Sect. 155.)



- (9) Placing infectious matter in dustbins. (Sect. 156.)
- (10) Letting houses or hotel rooms after a case of notifiable disease prior to satisfactory disinfection. (Sect. 157.)
- (11) Vacating premises without notifying the owner of a case of notifiable disease and disinfecting the premises. (Sect. 158.)
- (12) Using a public conveyance when suffering from a notifiable disease. (Sect. 159.)
- (13) Allowing the use of a public conveyance to a person suffering from a notifiable disease. (Sect. 160.)

### PROVISIONS REGARDING DEAD BODIES

- (1) With the concurrence of the Secretary of State, the Minister may make regulations as to the disposal of dead bodies otherwise than by burial or cremation, e.g. embalming.
- (2) The Justices may order the immediate burial or removal to a mortuary of a dead body.
- (3) A registered medical practitioner may direct that the body of a person who has died in hospital while suffering from a notifiable disease shall be taken direct to a mortuary or forthwith buried or cremated. (Sect. 163.)
- (4) Reasonably necessary steps must be taken to prevent persons coming unnecessarily in contact with the body of a person who suffered from a notifiable disease.
- (5) A wake must not be held over the body of a person who suffered from a notifiable disease.

### DISINFECTION OF PREMISES AND ARTICLES

- (1) A local authority may provide a disinfecting station and disinfect any article free of charge. (Sect. 166.)
- (2) Premises and articles may be disinfected and infected articles destroyed. Compensation may be paid for articles damaged or destroyed. (Sect. 167.)
- (3) Unaffected inmates may be removed from premises where there is a case of notifiable disease to some temporary shelter or accommodation. A Justice's order is necessary if the inmate does not consent. (Sect. 168.)
- (4) Where there is serious risk of the spread of infection, a Justice's order may secure the removal of a patient to hospital. Maintenance, in such a case, will be at the cost of the local authority. (Sect. 169.)
- (5) If a person in hospital suffering from a notifiable disease is without proper accommodation to return to, a Justice of the Peace may order his detention in hospital at the cost of the local authority, but the order will not affect the contractual obligation of any council in respect thereto. (Sect. 170.)

**PUBLIC HEALTH (AIRCRAFT) REGULATIONS, 1938**

The Minister of Health has issued these regulations designed to prevent the introduction of infectious diseases through the medium of airborne traffic.

Regulations 23 to 25 dealing with charges for services rendered by local authorities are important and are set out in full below—

23.—(1) Where the commander of an aircraft is required by or in pursuance of these regulations to carry out any measures with a view to reducing the danger or preventing the spread of infection, the responsible authority may themselves at the request of the commander and, if they think fit, at his cost, cause any such requirement to be complied with instead of enforcing the requirement against the commander. When the responsible authority cause any such requirement to be complied with at the cost of the commander they may, if they think fit, require the amount of the charge for the work of a part thereof to be paid to or deposited with them before the work is undertaken.

(2) The amount of the charge for any work so to be undertaken by the responsible authority shall be such reasonable sum as represents the actual or estimated cost to be incurred in undertaking the work, excluding any charge or claim in respect of profit, so, however, that it shall not exceed the sum of ten pounds unless notice of the proposed charges has been given to the commander before the work is undertaken.

(3) Where any action (including any measures of disinfection or disinsectization) has been taken in regard to an aircraft in pursuance of these regulations, the responsible authority or the medical officer shall, on the request of the commander or any other interested person, furnish the commander or such other person free of charge with a statement in writing recording the particulars of any such action and the reasons why the action was taken.

(4) The medical officer shall, on the request of any person arriving by an aircraft on which there had been a case of plague, yellow fever, typhus fever, or smallpox, or a case presenting clinical signs of cholera, furnish such person free of charge with a statement in writing showing the date of arrival and any sanitary measure to which he or any articles in his possession have been subjected.

**RECOVERY OF FEES AND CHARGES**

24. Every charge authorized by Regulation 23 shall be recoverable by the responsible authority as if it were a sum which the local authority are entitled to recover under Section 293 of the Public Health Act, 1936, and that section shall apply accordingly.

25. Subject to the provisions of Regulation 23 any expenses incurred by a county council, a local authority or a port health authority in the execution of the regulations shall be defrayed in the same manner as the expenses incurred by them in the execution and discharge of their existing powers and duties.

### PROVISIONS AS TO TREATMENT OF TUBERCULOSIS

In England, between 1908 and 1918, three fundamentally important services were added to official public health work, viz. maternity and child-welfare work, anti-tuberculosis work, and anti-venereal work. Some work on similar lines had been started previously, but only within the last twenty years have definite departments of work been organized dealing with these problems.

The major registered causes of premature death are tuberculosis, cancer, and pneumonia. Tuberculosis causes about one death in eleven from all causes, and nearly all these deaths occur before the normal course of life is run. Tuberculosis is entirely preventable, given an adequate application of sanitary principles.

Fatal tuberculosis in childhood, in the main, is acute tuberculosis and of human source, and the most satisfactory element in our national experience in recent years is the reduction in the death-rate from child tuberculosis.

The National Insurance Act, 1911, Sect. 64, provided that the Insurance Committee was to be responsible for the treatment of tuberculosis.

The Public Health (Prevention and Treatment of Disease) Act, 1913, authorized District Councils to contribute towards tuberculosis treatment. Sect. 62 enabled local sanitary authorities to apply to a police court for a magistrate's order for the removal to a hospital or institution of any person who is suffering from pulmonary tuberculosis and is in an infectious state.

THE PUBLIC HEALTH (TUBERCULOSIS) ACT, 1921, was passed to make further provision with respect to arrangements by local authorities for the treatment of tuberculosis. The provisions were incorporated in the Public Health Act, 1936, but the functions have been transferred to the Minister under the National Health Services Act, 1946, from the appointed day to be fixed under that Act.

The existing system which operates until the appointed day referred to is described below.

County Councils and County Borough Councils are made responsible for arrangements for the treatment of persons suffering from tuberculosis (including persons insured under the National Health Insurance Acts). Such treatment must be at

dispensaries, sanatoria, and other institutions in accordance with a scheme approved by the Minister of Health. The powers of the councils may be exercised by committees, sub-committees, or joint committees. Such committees may include co-opted members of the Insurance Committees, and other persons of experience, provided that not less than two-thirds of such committees are members of the council.

Where the council of any county or county borough fails to make adequate arrangements for the treatment of tuberculosis at institutions approved by the Ministry of Health, the Minister may, after giving the council an opportunity of being heard, make such arrangements as he may think necessary for the purpose of such treatment. Any expense incurred by the Minister in this connection may be paid, in the first instance, out of Government Funds, and the amount of any expenses certified by the Minister to have been so incurred may be demanded from the council and recoverable as a debt due to the Crown.

In the case of tuberculosis the organization is as follows—

All cases are notifiable. National Health Insurance Committees are provided with funds, and local authorities are required to provide sanatorium benefit for insured persons affected. This may also be extended to the dependants of insured persons. In order to place the treatment at the disposal of persons other than insured persons and their dependants, a sum of money was made available for distribution amongst local authorities. Tuberculosis dispensaries serve as receiving houses for persons affected. Some are examined, advised, and treated in the home; others are drafted into sanatoria and other institutions. The pivot of the system is the tuberculosis officer.

**EXPENSES.** Expenses incurred by a County Council are defrayed as general expenses, or, if the Minister of Health by order so directs, as special expenses, charged on a part only of the county area. Expenses incurred by County Borough Councils are defrayed out of the General Rate Fund.

**Institutional Treatment of Tuberculosis.** It is the duty of the council of every county and county borough to make adequate arrangements for the treatment of persons in their county or county borough who are suffering from tuberculosis. Such treatment must be at or in dispensaries, sanatoria, and other institutions approved by the Minister of Health. (Sect. 171.)

**Removal to Hospital of Infectious Persons Suffering from Tuberculosis of the Respiratory Tract.** A Court of Summary Jurisdiction may order the removal to hospital of infectious persons suffering from tuberculosis of the respiratory tract.

The council of a county or county borough shall have power

to make such arrangements as they think desirable for the after-care of persons who have suffered from tuberculosis. (Sect. 172.)

**Pulmonary Tuberculosis Scheme.** Maintenance grants are payable by the public health authority, the cost of such allowances being repaid by the Exchequer.

The Tomlinson Committee (Cmd. 6415) recommended the further development of rehabilitation measures applicable to tuberculosis patients.

### PROVISIONS WITH RESPECT TO BLINDNESS

Until the appointed day a County Council or local authority may make such arrangements as they think desirable for assisting in the prevention of blindness and for the treatment of persons who are suffering from any disease of, or injury to, the eyes. (Sect. 176.)

### MISCELLANEOUS

(a) Until the appointed day a local authority may with the approval of the Minister of Health provide—

(i) a temporary supply of medicine and medical assistance for the poorer inhabitants of their district; (Sect. 177 (1)), and

(ii) nursing attendance in certain cases. (Sect. 177 (2).)

(b) A county council or local authority may—

(i) subscribe to nursing associations (Sect. 178), and

(ii) arrange for publication within their area of information or for delivery of lectures, etc., on questions relating to health or disease. (Sect. 179.)

(c) The Minister may make regulations, approved by Parliament, prescribing the qualifications of medical officers and health visitors in connection with duties in respect of tuberculosis and venereal disease, until the appointed day. (Sect. 180.)

## PART VI

### HOSPITALS, NURSING HOMES, ETC.

#### HOSPITALS

The first legislation authorizing the establishment of municipal hospitals was contained in the Metropolitan Poor Act, 1867.

The Public Health Act, 1875, Sects. 131 to 133, empowered provincial sanitary authorities to provide hospitals for their inhabitants and to recover costs of maintenance of patients in hospital. Very little use was made of the power conferred in this way to establish general hospitals. Only three authorities (Barry, Bradford and Widnes) availed themselves of the provisions for that purpose.

The Isolation Hospitals Acts, 1893 and 1901, empowered

county councils to provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases. The Acts provided for an application to be made by petition by any one or more of the local authorities having jurisdiction in the county. After a local inquiry by the County Council an order could be made either dismissing the petition or directing an isolation hospital district for such district to be constituted. Where a hospital district was constituted, a committee had to be formed by the County Council, such committee to consist (a) wholly of members of the County Council, or (b) partly of representatives of the County Council, whether members of the council or not, and partly of representatives of the local area or areas in the district, or (c) wholly of such local representatives.

The Public Health Act, 1936, provided for the repeal of these provisions within two years from 1st October, 1937, of every Hospital Committee constituted under the Isolation Hospitals Acts, 1893 and 1901, and the transfer of the property and liabilities of the Committee to a Joint Hospitals Board. (Sect. 315.)

The Local Government Act, 1929, empowered County Councils to establish general hospitals. Sect. 63 required the County Council to make a survey of the hospital accommodation for the treatment of infectious diseases provided for districts wholly or partly in the county, and on the completion of such survey to prepare and submit to the Minister of Health for his approval a scheme for the provision of adequate hospital accommodation for the treatment of infectious disease within the county. (Sect. 14 (2).)

Modern principles of hospital organization demand the co-ordination of all methods of treatment, public or voluntary, into an unified system throughout the whole local government area or region. The Local Government Act, 1929, recognized this principle and paved the way for its adoption.

**Provision of Hospital Accommodation.** Until the appointed day under the National Health Services Act, 1946, a county council or local authority may provide hospital accommodation for persons in their county or district who are sick. (Sect. 181.)

**Recovery of Expenses of Maintenance in Certain Institutions.** In the case of a patient who becomes an inmate of an institution for the purpose of receiving treatment for infectious disease, a county council or local authority *may*, and in the case of any other patient maintained by them in an institution *shall*, recover from the patient or from any person legally liable to maintain him, or from his estate if he has died, any expenses incurred by the council or authority in providing for his maintenance in the institution not being expenses recoverable from any other source.

(Sect. 184.) In *Middlesex County Council v. Nathan*, 2 K.B.D. 272, 1937, Mr. Justice du Parcq held that the term "relative" had reference to those defined in Sect. 14 of the Poor Law Act, 1930.

**County Schemes for Provision of Hospital Accommodation for Infectious Disease.** (1) The Act applied the Local Government Act, 1929, Sect. 63, which provided that a survey of hospital accommodation for treatment of infectious disease in districts wholly or partly in the county had to be made by the county council.

(2) Upon the completion of the survey, the county council was required to prepare a scheme to provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases. (Sect. 185.)

**Legal Decisions.** A strange anomaly in hospital administration was shown in the case of *Allen v. Waters & Co.*, 1935, 1 K.B. 201. (W.N. 201; 32 L.G.R. 428.) A county hospital authority claimed from a husband the cost of treatment of his wife who had been injured owing to a defect in the steps of their residence. The husband claimed the cost from the owners who contended that the claim was out of time on the grounds that the County Council could not claim after six months and they were protected thereby. Prior to the Local Government Act, 1929, the County Council had no power to provide hospitals, but Sect. 14 (1) of that Act applied to County Councils the Public Health Act, 1875, Sect. 131, under which sanitary authorities could provide hospitals. But the Public Health Act, 1875, Sect. 132, which limited the time of recovery to six months after treatment, was not made applicable to County Councils. The Act has corrected this anomaly by making expenses uniformly recoverable by proceedings commenced within twelve months after discharge from the institution.

The well-known decisions in *Evans v. Liverpool Corporation*, [1906] 1 K.B. 160, and *Hillyer v. St. Bartholomew's Hospital*, [1909] 2 K.B. 820, decided that local authorities were not liable for any negligence in the medical officers. The decision in *Lindsey County Council v. Marshall*, 1936 (100 J.P. 411; 52 T.L.R. 661; [1937] A.C. 97) has thrown considerable doubt on the legality of these cases. The matron of a county council's nursing home failed to notify a patient that there had been puerperal fever in the home. The House of Lords confirmed the finding of the Court of Appeal that as the admission of patients was an administrative matter the council was liable for negligence.

## NURSING HOMES

THE MIDWIVES AND MATERNITY HOMES ACT, 1926, amended the Midwives Act, 1902, providing for the registration of maternity homes by county and county borough councils. The circumstances



under which the local authorities could refuse to register were laid down with an appeal by the proprietor to a Court of Summary Jurisdiction and Quarter Sessions. The local authority was empowered to make by-laws regarding records of patients and births and to inspect such homes.

THE NURSING HOMES REGISTRATION ACT, 1927, repealed most of the provisions of the 1926 Act in order to extend the provisions to nursing homes as well as maternity homes.

This Part of the Act of 1936 re-enacts the existing law as contained in the Nursing Homes Registration Act, 1927. It provides *inter alia* for—

(1) Registration of nursing homes under a penalty of £50 for non-compliance. (Sect. 187.)

(2) Cancellation of registration on any ground that would entitle the council of a county or county borough to refuse registration. (Sect. 188.)

(3) Procedure and right of appeal by applicant or person registered, where registration refused or cancelled. (Sect. 189.)

(4) Making of by-laws as to nursing homes by councils of counties or county boroughs. (Sect. 190.)

(5) Inspection of nursing homes by medical officer of health of a county or county borough, or a qualified nurse, or other authorized officer of the council. (Sect. 191.)

(6) The Registration authority to exempt certain institutions. (Sect. 192.)

(7) The Minister to exempt Christian Science nursing homes. (Sect. 193.)

(8) Delegation of powers as to nursing homes by county council to council of county districts. (Sect. 194.)

(9) Offences by companies under provisions of this Part of this Act relating to nursing homes to be an offence of the chairman and every director of the company. (Sect. 195.)

*Nursing Home* means any premises used or intended to be used for the reception of, and the providing of nursing for, persons suffering from any sickness, injury, or infirmity, and includes a maternity home. (Sect. 199 (1).)

*Maternity Home* means any premises used or intended to be used for the reception of pregnant women, or of women immediately after childbirth. (Sect. 199 (1).)

A county council may by agreement delegate any of its powers as to nursing homes to the council of any non-county borough, urban or rural district in the county. A council aggrieved by the refusal of the county council to delegate these powers, or by any conditions imposed by the county council, may appeal to the Minister of Health, whose decision is final.



The expenditure of a county council is a general county charge but an amount fixed by the county council, subject to appeal to the Minister of Health, is repaid to any council exercising delegated powers.

LABORATORIES AND AMBULANCES may be provided by a county council or a local authority. (Sects. 196 and 197.)

MORTUARIES, etc., may be provided by a local authority or a parish council. The local authority or parish council may make by-laws with respect to any mortuary or post-mortem room which they have provided. (Sect. 198.)

The Nurses Act, 1943, requires Agencies supplying nurses to be licensed and made the councils of counties and county boroughs the licensing authorities. Licences may be refused on the ground of the unsuitability of the persons carrying on the business or the premises used for the purpose. The authorities may charge fees for licences granted and impose conditions. They are authorized to inspect premises of the Agencies and their records.

County Councils may delegate their functions to district councils. The Nurses Act, 1945, excluded County District Nurses Associations from the Act of 1943.

## PART VII

### NOTIFICATION OF BIRTHS, MATERNITY AND CHILD WELFARE, AND CHILD PROTECTION

#### MATERNITY AND CHILD WELFARE

Great changes will be introduced on the appointed day under the National Health Service Act, 1946. The following is the position until that day is fixed.

There is an immense burden of invalidity and morbidity arising during pregnancy and childbirth, as has been clearly shown by the very high claims of women under the National Health Insurance Acts. To secure the best conditions for maternity and childhood must be regarded as supremely important in public health administration.

A great deal of the sickness and mortality could be avoided if it were assured that every woman received proper and adequate attention before, during, and after the birth of her child. One of the most pressing problems is that of midwifery, since most of the births—varying in different localities from 30 to 95 per cent—take place under the supervision of midwives.

THE MIDWIVES ACT, 1902, laid it down that, after 1905, no woman not certified under the Act should use the name of midwife, and that, after April, 1910, no woman should habitually and for gain attend women in childbirth, other than under the directions of a qualified medical practitioner, unless she were so

certified. The Central Midwives Board was established to issue, and if necessary to cancel, certificates, to supervise the training, and to regulate the practice of midwives. The local authorities—County Councils and County Borough Councils—exercise general supervision, investigate charges of malpractice or negligence, suspend from practice according to the rules, and appoint inspectors (usually medical practitioners or qualified midwives).

The conditions of practice had not been satisfactory. Most midwives set up in independent practice; and, if dependent on their earnings, as most were, they found it difficult to make a living except in towns or the more densely populated districts. Competent midwives were therefore badly distributed, the lesser populated and country districts being served rather badly.

THE MIDWIVES ACT, 1936, provided for the establishment of a midwifery service under the control of the local authority.

Many improvements have been effected, though much still remains to be done. The period of training for taking the C.M.B. Certificate has been lengthened. Local authorities began to pay fees to midwives in private practice and in some cases to employ whole-time municipal midwives. Developments have taken place in connection with home-helps and with the arrangements for home nursing, whilst the number of maternity centres has been increased.

THE MIDWIVES ACT, 1918, empowered the local supervising authority (in urban and rural districts the County Council) to aid the training of midwives, whether within or without their area. Government grants are still payable for training midwives.

THE MATERNITY AND CHILD WELFARE ACT, 1918, provided for the establishment of a Maternity and Child Welfare Committee by every local authority.

THE MIDWIVES ACT, 1926, imposed a fine of £10 for acting as a midwife without a certificate except in the cases of sudden or urgent necessity or training purposes. Where a midwife is suspended, for causes not brought about by her own default, compensation is payable by the local authority. The local authority may pay the expenses of attendance and arrange to recover the cost by instalment repayments from the patient.

THE LOCAL GOVERNMENT ACT, 1929, Sect. 101, made it the duty of the council of every county (other than the County of London) and of every county borough, six months at least before the beginning of each fixed grant period, to prepare and submit to the Minister of Health for his approval a scheme for securing the payment by the council of annual contributions towards the expenses of voluntary associations, if any, providing maternity and child welfare services in or for the benefit of the county or county borough. This was necessary because the grants

formerly paid directly by the Minister were discontinued and incorporated in the General Exchequer contribution. Section 60 provided that where any services are provided by a council which is not a local education authority for elementary education for the district (now an Educational Divisional Executive), the Minister, by Order, may transfer the service to that body. Sect. 62 provides that the council of any district having a Maternity and Child Welfare Committee and employing a full-time medical officer of health may apply to the Minister to be made the local supervising authority under the Midwives Acts, 1902 and 1926.

THE NURSES REGISTRATION ACT, 1919, established a General Nursing Council. This council must compile a Register of Nurses, consisting of a general register and a supplementary register for male, mental, and sick children's nurses. The council must draw up rules with regard to the register, including the conditions of admission. These rules must first be approved by the Minister of Health. The unlawful assumption of the title of registered nurse is subject to penalties.

### WELFARE AUTHORITIES

Part VII of the Public Health Act, 1936, deals with the constitution of welfare authorities being the council of a county borough, county, or county district. (Sect. 200.)

A MATERNITY AND CHILD WELFARE COMMITTEE must be appointed by every welfare authority which may, if the authority think fit, be a committee of the authority appointed for other purposes or a sub-committee of such a committee. Two members, at least, must be women. (Sect. 201.)

The committee may make such arrangements as may be sanctioned by the Ministry of Health for attending to the health of expectant and nursing mothers, and of children who have not attained the age of 5 years, if they are not being educated in schools recognized by the Minister of Education. The Ministry of Health formerly paid grants of 50 per cent of the approved net expenditure. Under the Local Government Act, 1929, these grants have been discontinued, and the amount for the standard year (1928-29) included in the General Exchequer Contribution. It should also be noted that the formula which determines the block grant of a county or county borough contains a factor based on the estimated number of children under 5 years of age per thousand of the population.

**Notification of Births.** Notification of births must be made, by father or person in attendance, within thirty-six hours, to the medical officer of health of the council who are the welfare authority for the area in which the birth takes place. (Sect. 203.)

**Maternity and Child Welfare.** A Welfare Authority is authorized to make arrangements for the care of expectant and nursing mothers, and of children who have not attained the age of 5 years and are not being educated in schools recognized by the Board of Education. (Sect. 204.)

The employment of women in factories or workshops within four weeks after childbirth is prohibited. (Sect. 205.)

### THE MIDWIVES ACT, 1936

In 1928 a Departmental Committee was appointed to inquire into the problem of maternal mortality and morbidity. An Interim Report was issued in 1930 and a Final Report in August, 1932. The Committee would not advocate the holding of inquests in the case of every maternal death but recommended local authorities to arrange for their medical officers to make inquiries into such deaths and furnish confidential reports thereon to the Minister. The Midwives Act, 1936, has for its object the securing of an adequate midwifery service in every area under the control of the local authority. The local authority may act through the voluntary associations or set up a public service. The voluntary bodies must be consulted and they may make representations to the Minister on the local scheme. Compensation had to be paid to midwives who retired voluntarily before the 30th July, 1939, or who are retired by the local authority owing to age and infirmity. Scales of fees must be fixed for the service of midwives and such fees recovered from the patient or her liable relatives if able to pay. The local authority or nursing association must provide courses of instruction for practising midwives. An Exchequer grant of one-half of the additional net approved expenditure of all local authorities will be provided, but individual authorities will receive shares scaled up or down according to their relative needs as measured by the block grant formula of weighted population. It is intended that this grant will be merged in the block grant at some later date.

### CHILD LIFE PROTECTION

This Part of the Public Health Act, 1936, is in substitution for the Infant Life Protection provisions originally contained in Part I of the Children Act, 1908, and, although amended by the Children and Young Persons Act, 1932, was not consolidated in the Children and Young Persons Act, 1933.

**Persons Receiving Children for Reward** for the nursing and maintenance of a child under the age of 9 years apart from his parents, or having no parents must notify the local authority. (Sect. 206.)

If residence is changed, or if a foster child dies or is removed by a person who is maintaining a foster child, notice must be given to the local authority. The notice must be given at least seven days before to the Welfare Authority. (Sect. 207.)

**PENALTIES FOR FAILURE TO GIVE NOTICES** before the latest time specified for giving the notice may be enforced against the person liable. (Sect. 208.)

**Child Protection Visitors** are appointed by every welfare authority where there are any persons residing within their area who undertake the nursing and maintenance of foster children. (Sect. 209.)

**PERSONS PROHIBITED FROM RECEIVING FOSTER CHILDREN** are named in Sect. 210.

**OVERCROWDING WHERE FOSTER CHILDREN ARE KEPT** is prevented by the welfare authority fixing maximum numbers and imposing conditions to be complied with so long as the number of children kept in the premises exceeds a specified number. (Sect. 211.)

**EXEMPTIONS** from this Part of the Act extend to any relative or legal guardian of a child who undertakes the nursing and maintenance of the child, or to any person who undertakes the nursing and maintenance of the child under the provisions of any Act for the relief of the poor or of any order made under any such Act, or to any hospital, convalescent home or institution named in Sect. 219.

## INFANT MORTALITY

Public health measures for improving child health are more fruitful than any others in securing adult fitness for useful life.

There is a high death rate among infants under one year of age, in spite of the fact that a big percentage of all infants is born free from obvious disease. It should be noticed that the greatest number of deaths occur in the first three months and especially in the first few weeks. Furthermore, since the conditions that kill infants injure others, a high infant mortality rate denotes not only a large number of deaths, but implies a great deal of illness amongst the infants who survive.

**Factors Influencing Infant Mortality.** 1. Infant mortality is highest amongst the poor and lowest amongst the well-to-do.

2. Infant mortality appears to be highest in industrial districts. Thus it is excessive in counties in which mining, textiles, and metal working industries predominate, in spite of the fact that wages are higher and the standard of comfort is higher than in agricultural counties.

3. An excessive number of persons per room increases infant mortality.

4. A large proportion of infant deaths is due to troubles arising from disturbances of the alimentary system owing to wrong feeding. The majority of mothers are ignorant of the relative nutritive value and digestibility of foods. The substitution of artificial for natural feeding is a great evil, as it deprives the infant of essential fat, which is not present even in cow's milk.

5. The mortality of illegitimate infants is much higher than that of children born in wedlock. Syphilitic infection is ten times more frequent amongst illegitimate than legitimate infants.

**Prevention of Infant Mortality.** 1. At present an occupier of a factory or workshop may not knowingly employ a woman within four weeks after childbirth. This is good as far as it goes, but leaves out the critical weeks immediately preceding motherhood, during which period all women should be relieved of hard work. This is not economically possible for many working-class mothers, but a good deal can be done by organizing voluntarily or municipally a service of domestic helpers for this period. Many mothers are insufficiently or improperly fed before confinement. Where the husband has not been able to provide adequate and proper food during this period it should be forthcoming from other sources. It is fairly easy to arrange for the supply, through a maternity centre, of milk (either free or at a cheap rate) to expectant and nursing mothers. The question of repayment of cost can be followed up later, if necessary.

2. *Infant management.* Investigation of the causes of death of infants shows that the common assumption that women know by instinct how to feed and manage infants is a complete illusion. These things require training and experience. The elder girls in elementary schools should receive education on this subject. Young mothers should also be taught in maternity and infant welfare centres, where milk and advice and medical attention can be given. Although there are a number of these centres already organized by Social Service Societies and local authorities, they should be multiplied.

## PART VIII

### BATHS, WASHHOUSES, AND BATHING PLACES, ETC.

#### PROVISION OF BATHS

Power is given to a local authority to provide—

(a) public baths and washhouses, either open or covered, and with or without drying grounds, and

(b) public swimming baths and bathing places, either open or covered,  
or any of those conveniences. (Sect. 221.)

**Charges for the Use of Baths, etc.,** may be made by a local authority. These must be advertised. (Sect. 222.)

**By-laws for Regulations of Baths, etc.,** may be made by a local authority and for the regulation of persons resorting thereto, including the exclusion therefrom of undesirable persons. (Sect. 223.)

Baths, etc., under the management of a local authority shall be deemed to be a public and open place for the purposes of any enactment relating to offences against decency. (Sect. 224.)

**Use of Baths and Bathing Places for Swimming Contests, etc.,** or by schools and clubs may be authorized during which a local authority may close temporarily to the public any swimming bath or bathing place. (Sect. 225.)

**Closing of Baths and Bathing Places** during any period between the first day of October and the last day of following April and use thereof for such purposes as the local authority think fit is provided for subject to the restrictions (including powers to make by-laws) set out in Sect. 226.

**Power of Local Authority to Lay Pipes** in streets for purposes connected with baths, etc., is granted. (Sect. 227.)

**Trustees** of any public baths, washhouse, swimming bath or bathing place, with the consent of the committee of management may sell or lease their undertakings to a local authority. (Sect. 228.)

**Statutory Undertakers** may supply water, gas or electricity to baths, etc., either without charge, or on such other favourable terms as they think fit. (Sect. 229.)

**Parish Councils** are empowered to provide baths, bathing places and washhouses, and for the purpose of Sect. 193 of the Local Government Act, 1933 (which relates to the expenses of parish councils and parish meetings), the expression "the Adoptive Acts" shall be deemed to include the foregoing provisions of this Part of this Act. (Sect. 230.)

**Public Bathing.** By-laws with respect to public bathing may be made by a local authority—

- (1) regulating the areas and times in which it shall be permitted;
- (2) prescribing the sites of bathing machines, huts or tents, and regulating the use of and charges for same;
- (3) regulating bathing costumes so far as decency requires;
- (4) requiring provision of life saving appliances and protection of bathers from danger;
- (5) regulating the navigation of pleasure vessels in the area



during the time allowed for public bathing, provided this is not inconsistent with any by-laws made by dock undertakers. (Sect. 231.)

**Bathing Huts** or other conveniences for bathing may be provided by a local authority on any land belonging to them or under their control, and they may make charges for the use thereof. (Sect. 232.)

**By-laws.** Much public attention has in recent years been directed to the question of conditions in swimming baths and bathing pools. Sect. 233 is a new provision in the general law.

By-laws may be made by a local authority with respect to swimming baths and bathing pools, whether open or covered, which are not under their management for—

- (a) securing the purity of the water therein;
- (b) ensuring the adequacy and cleanliness of the accommodation thereat;
- (c) regulating the conduct of persons resorting thereto; and
- (d) the prevention of accidents.

This section does not apply to any swimming baths or bathing pools which are not open to the public and for, or in connection with, the use of which no charge is made. (Sect. 233.)

**Life-saving Appliances.** A local authority may provide such life-saving appliances at such places, whether places used for bathing or not, as they think fit. (Sect. 234.)

## PART IX COMMON LODGING-HOUSES

This Part, which contains a number of amendments, is set out in *Law of Housing and Planning*, Fourth Edition (Pitman).

## PART X CANAL BOATS

This Part makes provision for the registering of canal boats and enforcing provisions in relation thereto. It is extended to London by Sect. 257.

**Authorities** for registering, and enforcing provisions as to, canal boats are the local authorities and port health authorities whose districts include, or abut on, some part of the canal. (Sect. 249.)

**Canal Boats Used as Dwellings** must be registered, and the Minister is required to make regulations with respect to the registration which must be laid before Parliament. (Sects. 250 and 251.)



PENALTIES for use of unregistered canal boat as dwelling, and for breach of regulations are enforceable against the master and owner of the boat. (Sect. 253.)

**Definitions.** "Master" in relation to a canal boat, means the person having command or charge of the boat; and "Owner" includes a person who, though only the hirer, appoints the master and other persons working the boat.

Infectious disease on canal boats shall be dealt with by a local authority or port health authority in manner provided by Sect. 254.

**Power to Enter and Inspect** canal boats is given to an inspector appointed by the Minister or an authorized officer of a local authority or port health authority. (Sect. 255.)

**Offences.** Proceedings against offenders are taken before a Court of Summary Jurisdiction. (Sect. 256.)

## PART XI MISCELLANEOUS

### WATER-COURSES, DITCHES, PONDS, ETC.

**Nuisances.** The following are statutory nuisances for the purposes of Part III of the Act, viz.—

(a) any pond, pool, ditch, gutter, or water-course which is so foul or in such a state as to be prejudicial to health or a nuisance; and

(b) any part of a water-course, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance or give rise to conditions prejudicial to health. (Sect. 259.)

**Power of Parish Council or Local Authority to Deal with Ponds, Ditches, etc.** Any local authority or parish council may—

(a) deal with any pond, pool, ditch, gutter, or place containing or used for the collection of any drainage, etc., by draining, cleansing, or covering it, etc.

(b) execute any works, including works of maintenance or improvement; and

(c) contribute towards the expenses incurred by any other person in doing anything mentioned in this subsection. (Sect. 260.)

**AN ORDER FOR CLEANSING** offensive ditches lying near to, or forming boundary of district, may be obtained from a Court of Summary Jurisdiction by a local authority against the local authority of an adjoining district. (Sect. 261.)

Water-courses and ditches may be required to be culverted

by a local authority where building operations are in prospect. (Sect. 262.)

**WATER-COURSES IN URBAN DISTRICTS.** These must not be culverted except in accordance with plans submitted to and approved by the local authority whose approval shall be deemed to have been given if they fail to notify their determination within six weeks. (Sect. 263.)

**THE REPAIR AND CLEANSING OF CULVERTS** by the owner or occupier of any land may be enforced by an urban authority subject to appeal under Part XII of this Act. (Sect. 264.)

**THE COST OF EXECUTION OF WORKS.** The cost of works mentioned in the foregoing provisions may be defrayed by the local authority or, by agreement with the owner or occupiers, the local authority may execute such works themselves.

### **SHIPS AND BOATS**

Certain provisions of the Act, viz. Parts III, V, VI, and XII, and certain provisions of Part II are made applicable to ships and boats. (Sect. 267.)

### **TENTS, VANS, SHEDS, ETC.**

**Nuisances Arising from and By-laws and Other Matters Relating to Tents, Vans, etc.** The provisions of Parts III, V, VII, and XII of the Act and the provisions of Part II relating to filthy and verminous premises or articles and verminous persons, shall apply in relation to tents, vans, sheds and similar structures used for human habitation as they apply in relation to houses, or to buildings so used. (Sect. 268.)

#### **Power of Local Authority to Control Use of Moveable Dwellings.**

(1) For the purpose of regulating the use of moveable dwellings, a local authority may grant licences authorizing persons to—

(i) allow land occupied by them to be used as sites for moveable dwellings; and

(ii) erect or station, and use, such dwellings within the district; and may attach to any such licence such conditions as they think fit in the case of a licence authorizing the use of—

(a) land, with respect to the number and classes of moveable dwellings which may be kept thereon at the same time, and the space to be kept free between any two such dwellings, with respect to water supply, and for securing sanitary conditions; and

(b) a moveable dwelling, with respect to the use of that dwelling (including the space to be kept free between it and any other such dwelling) and its removal at the end of a specified period, and for securing sanitary conditions.

(2) A person shall not allow any land occupied by him to be used for camping purposes on more than forty-two consecutive days or more than sixty days in any twelve consecutive months, unless either he holds in respect of the land a licence under (i) above, or each person using the land as a site for a moveable dwelling holds in respect of that dwelling a licence under (ii).

For this purpose, land which is in the occupation of the same person as, and within one hundred yards of, a site on which there is during any part of any day a moveable dwelling shall be regarded as being used for camping purposes on that day.

(3) A person shall not keep a moveable dwelling on any one site, or on two or more sites in succession, on more than forty-two consecutive days, or sixty days in any twelve consecutive months unless either he holds a licence under (ii), or the occupier has a licence under (i).

(4) Where an application for a licence is made to a local authority, the authority shall be deemed to have granted it unconditionally unless within four weeks they give notice stating that the application is refused, or stating the conditions subject to which the licence is granted. Appeal lies to a court of summary jurisdiction.

(5) The section does not apply to—

(i) a moveable dwelling which is kept by its owner on—

(a) land occupied by him in connection with his dwelling-house and is used for habitation only by him or by members of his household; or

(b) agricultural land occupied by him and is used for habitation only at certain seasons and only by persons employed in farming operations on that land; or

(ii) a moveable dwelling which belongs to a person who is the proprietor of a travelling circus, roundabout, amusement fair, stall or store (not being a pedlar, hawker, or costermonger) while it is being used by him in the course of travelling for the purpose of his business; or

(iii) a moveable dwelling while it is not in use for human habitation and is being kept on premises the occupier of which permits no moveable dwelling to be kept thereon except such as are not for the time being in use for human habitation.

(6) Special exemption may be granted by the Minister to an organization and its members, and such exemption operates as a licence.

(7) In default of the necessary licence or exception, contravention of the section is an offence.

(8) For the purposes of this section—

(i) "moveable dwelling" includes any tent, any van or other

conveyance whether on wheels or not, and subject as hereinafter provided, any shed or similar structure, being a tent, conveyance or structure which is used either regularly, or at certain seasons only, or intermittently, for human habitation;

(ii) the owner of land which is not let shall be deemed to be the occupier thereof;

(9) The section does not apply where any local Act provision is in force, but the local authority may apply to the Minister for a declaration that it is in force in their district, and then the local Act provision will be deemed to be repealed. (Sect. 269.)

### HOP-PICKERS

By-laws for securing decent accommodation for persons engaged temporarily as hop-pickers and persons engaged in similar work may be made by a local authority. (Sect. 270.)

## PART XII

### GENERAL

This Part contains a number of important amendments of detail including—

### SUPPLEMENTAL AS TO POWERS OF COUNCILS

Councils may combine for purpose of any of their functions under this Act without prejudice to the powers of combination conferred on local authorities by the Local Government Act, 1933. (Sect. 272.)

A local authority is empowered to execute certain work on behalf of the owner or occupier which they have required him to execute. (Sect. 275.)

### BREAKING OPEN OF STREETS

General provisions as to breaking open streets include—

(1) The incorporation of the Waterworks Clauses Act, 1847, Sects. 28 and 30 to 34, subject to such adaptations as may be necessary. Except in cases of emergency arising from defects in existing sewers, drains, or pipes, a street or bridge which is under the control or management of, or repairable by, a railway company or dock undertakers shall not be opened or broken up without their consent, but that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister, whose decision shall be final. (Sect. 279 (1) (d).)

(2) Where a person other than a local authority is concerned, and where he gives notice to a railway company or dock undertakers that he desires to open or break up a street or bridge which

is under their control or management or repairable by them, they may within fourteen days give notice to him that they intend themselves to execute the necessary work and, if before the expiration of fourteen days, or after such a notice has been given to him, he proceeds himself to open or break up the street or bridge, he will be liable to a fine.

(3) Where the undertakers give such notice, it will not be obligatory on them to execute the work until the cost, as estimated by their engineer or surveyor, has been paid to them or security for payment has been given to their satisfaction. They must repay any excess on the one side and recover any excess on the other side. (Sect. 279.)

**Protection for Certain Works of Railway Companies and Dock Undertakers.** Any length of street which forms a level crossing, or crosses over or under a railway or other works, and which is not under the control of the company or undertakers. In such a case, where it is proposed to open or break up a length of street, notice must be given under Sect. 30 of the Waterworks Clauses Act, 1847, and if the work is likely to affect the structure, the work must be carried out to the satisfaction of the engineer of the company or undertakers in accordance with plans approved by him. Disputes may be referred to arbitration at the request of either party. (Sect. 280.)

**Protection for Tramway Undertakings** entitled to the benefit of Sect. 32 of the Tramways Act, 1870, is extended to operations authorized by this Act. (Sect. 281.)

Sect. 153 of the Public Health Act, 1875, which relates to the power to require gas and water pipes to be moved, is applied to the purposes of this Act. (Sect. 282.)

## NOTICES, ETC.

**Service of Notices, etc.** In case of a document to be given to or served on the owner or occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, it may be given or served by addressing it to the person concerned by the description of "owner" or "occupier" of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises. (Sect. 285.)

**Proof of Resolutions, etc.** In any proceedings under this Act a document purporting to be certified by the clerk of a council as a copy of a resolution or order passed or made by that council on a specified date, or of the appointment of, or of any authority

given to, an officer of that council on a specified date, shall be evidence that that resolution, order, appointment or authority was duly passed, made, or given by the council on the said date. (Sect. 286.)

## ENTRY AND OBSTRUCTION

**Power to Enter Premises** at all reasonable hours is given to any authorized officer of a council. (Sect. 287 (1).)

Admission cannot be demanded as a right (except where the premises are a factory, workshop, or workplace) unless 24 hours' prior notice has been given to the occupier.

Application may be made to a justice for a warrant authorising entry (by force if necessary) to any premises where—

- (1) admission has been refused;
- (2) refusal is apprehended;
- (3) the premises are unoccupied;
- (4) the owner is temporarily absent;
- (5) an application for admission would defeat the object of the entry;
- (6) the case is urgent.

If any person who is admitted into a factory, workshop or workplace discloses to any person any information obtained by him in the factory, workshop, or workplace with regard to any manufacturing process or trade secret, he will be guilty of an offence unless such disclosure was made in the performance of his duty. (Sect. 287 (5).)

Nothing in the section shall be construed as limiting the provisions of Sect. 57 of the Waterworks Clauses Act, 1847, as incorporated with this Act, or the provisions of Part VII of this Act with respect to entry upon and inspection of premises by child protection visitors and persons authorized to exercise the powers of such visitors, or the provisions of Part X of this Act with respect to entry upon, and inspection of, common lodging houses and canal boats. (Sect. 287 (6).)

The penalty for obstructing the execution of the Act or of any by-law, order, or warrant made or issued thereunder is a fine not exceeding £5. (Sect. 288.)

Local authorities are empowered to require occupiers to permit works to be executed by an owner which he is by or under this Act required to execute. (Sect. 289.)

## NOTICES REQUIRING THE EXECUTION OF WORKS

**Provisions as to Appeals** against, and the enforcement of, notices requiring execution of works are contained in Sect. 290.

**PROVISIONS AS TO RECOVERY OF EXPENSES, ETC.**

Certain expenses are recoverable from owners as a charge on the premises; payment by instalments, within a period not exceeding thirty years, may be declared by order of the local authority and interest charged. (Sect. 291.)

A charge in respect of establishment expenses not exceeding 5 per cent of the cost of the works may be included. (Sect. 292.)

**Recovery of Expenses, etc.** Expenses which a council are entitled to recover under this Act may be recovered either summarily as a civil debt or as a simple contract debt in any court of competent jurisdiction. (Sect. 293.)

**Limitation of Liability of Certain Owners.** The liability of agents and trustees who have not in their hands sufficient money to discharge liability for expenses under the Act is limited to the amount of such money; but the council will be able to recover the rest of the sum due from the person on whose behalf the agent or trustee receives the rent. (Sect. 294.)

**Charging Orders.** On the application of the person executing the works, or any person who has advanced the money to enable them to be executed a local authority may grant a charging order. (Sect. 295.)

**PROSECUTION OF OFFENCES, ETC.**

**Proceedings for Offences.** Under this Act may be prosecuted under the Summary Jurisdiction Acts. (Sect. 296.) Proceedings in respect of an offence created by or under this Act shall not, without the written consent of the Attorney-General, be taken by any person other than a party aggrieved or the council or body whose function it is to enforce the provision in Question. (Sect. 298.)

**Appeals.** Appeals and other applications to courts of summary jurisdiction and appeals to quarter sessions shall be by way of complaint for an order and the Summary Jurisdiction Acts shall apply to the proceedings. (Sect. 300.)

Appeals against the decisions of Justices lie to Quarter Sessions, other than in any case where the parties concerned might under the Act have required the dispute to be determined by arbitration instead of by such a court. (Sect. 301.)

An appeal from a court of summary jurisdiction lies to a Court of Quarter Sessions within fourteen days. (Summary Jurisdiction (Appeals) Act, 1933, Sect. 1.) On an appeal against an order imposing penalties Quarter Sessions cannot consider the validity of the notice if there has been no appeal against the original order. (*Ager v. Gates*, 1934, 151 L.T. 98; 98 J.P. 223.)



## ARBITRATIONS

Arbitration under this Act shall be by reference to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the Minister. (Sect. 303.)

Members and officers of local authorities, joint boards, and port health authorities are protected from personal liability (as provided by Public Health Act, 1875, Sect. 265) for any act done or contract entered into *bona fide* for the purpose of executing this Act. (Sect. 305.)

Land for the purposes of this Act may be acquired compulsorily by means of a Provisional Order made by the Minister and confirmed by Parliament. (Sect. 306.)

## EXPENSE AND BORROWING

A contribution may be made by a county council to schemes of hospital accommodation, sewers, sewage disposal works, or water supply, etc., incurred by the council of a county district within the county to an amount equal to the whole or any part of such expense. (Sect. 307.)

Special Expenses of Rural Authorities shall be chargeable on the contributory place without prejudice to powers under Local Government Act, 1933, Sect. 190 (3). (Sect. 308.)

Money may be borrowed on the security of sewage land and plant by mortgage thereof for any purposes of this Act, or of the Public Health Acts, 1875 to 1932, so far as those Acts are not repealed, for purposes which money may be borrowed under the Local Government Act, 1933. The loan must be repaid within thirty years. (Sect. 310.)

## POWERS OF THE MINISTER

By-laws made under this Act must be confirmed by the Minister of Health. (Sect. 312.)

In addition to the powers under the Public Health Acts, the Local Government Act, 1933, enables the council of a county or of a borough to make by-laws for the good rule and government of the whole or part of the county or borough, as the case may be, and for the prevention and suppression of nuisances therein. The Minister may amend local Acts by order laid before Parliament on application by local authority. (Sect. 313.)

**Local Inquiries.** The Minister may cause local inquiries to be held where he is authorized to determine any difference, etc. (Sect. 315.)



**REGULATIONS**

Regulations must be laid before Parliament for a period of thirty days during the session of Parliament. (Sect. 319.)

General provisions are incorporated as to the transfer, compensation and superannuation rights of officers, the provisions of the Local Government Act, 1933, being applied. (Sects. 326 and 327.)

**RELINQUISHMENT AND TRANSFER OF POWERS AND DUTIES**

The relinquishment of functions to a county council by a district council shall specify a period for such relinquishment. Except in the case of an agreement which is expressed to remain in force for a specified period not exceeding five years, it shall be an implied term of any agreement made under this section that either party to the agreement may determine it at the end of any financial year by giving notice to the other party not less than twelve months beforehand. Notice must be given to the Minister of the determination of the agreement, or of any variation in the terms thereof. (Sect. 320.)

**ENFORCEMENT OF DUTY**

A local authority cannot be exempted, by a provision in a local Act, from a duty imposed by a General Act like the Public Health Act, 1936.

A private individual may compel a local authority to perform their duties by complaining to the Minister. (Sect. 322.)

On default of the council of a county district their duties and powers may be transferred to the county council or the Minister. (Sects. 321 and 322.)

**SAVINGS**

There are savings with regard to certain bodies. The provisions of the Act may be applied to Crown property if the appropriate authority agrees. (Sects. 328 to 341.)

**POWER OF RAILWAY COMPANIES, DOCK UNDERTAKERS AND LAND DRAINAGE AUTHORITIES TO ALTER SEWERS, ETC.**

Any railway company, dock undertakers or land drainage authority may, after giving reasonable notice to the local authority concerned, at their own expense and on substituting other sewers, drains, culverts and pipes which will be equally effectual and will entail no additional expense on the local authority, take up, divert or alter the level of any sewers, drains, culverts or pipes vested in the local authority which pass under, or interfere

with the improvement or alteration of, the railway of the railway company, or, as the case may be, any river, canal, towing path or works forming part of the undertaking of the undertakers, or any water-course or other works vested in or under the control of the land drainage authority. (Sect. 330.)

**Dock Undertakers and Railways.** A protective section in favour of dock undertakers and railway companies has been both re-drafted and extended. (Sect. 333.)

**Land Drainage Authorities. etc.** A protective section in favour of land drainage authorities has also been re-drafted and extended. (Sect. 334.)

**Middlesex County Council.** There is a saving clause for the Middlesex County Council as sewerage and sewage disposal authority. (Sect. 336.)

### INTERPRETATION, TRANSITORY PROVISIONS, REPEALS, ETC.

This includes application of portions of Act to London.

**Metropolis.** The public health functions of the London County Council are to a large extent supervisory and co-ordinating. They deal with health questions common to the whole county, and are the central hospital authority for the county. They are also the sole authority for the provision of main sewers and sewage disposal.

The metropolitan borough councils are the local health and sanitary authorities under the Public Health (London) Act, 1936.

**THE LOCAL GOVERNMENT ACT, 1929, Sect. 104,** provides that the Minister of Health may reduce the grant to a council under Part IV of the Act if he is satisfied, either upon representation made to him by any association or other body of persons experienced or interested in matters relating to public health, or apart from any such representation that they have failed to achieve or maintain a reasonable standard of efficiency and progress in the discharge of their functions relating to public health services (regard being had to standards maintained in other areas) and that the health of all or some of the inhabitants has been or is likely to be thereby endangered.

### FOOD AND HEALTH

The Public Health Acts contain provisions relating to offensive trades and unsound food.

There is a close connection between food and health, and local authorities have wide powers for dealing with the problem of protecting the food supply.

1. **Infected Food.** (a) Food may become infected by bacteria.

For example, disease germs invade the bodies of some people (known as carriers) without actually infecting them. Yet food handled by such persons becomes infected by the germs, and the disease may then be contracted by other people.

(b) Flies also carry infection, either on their legs, where the germs of typhoid, cholera, tuberculosis, and dysentery have been found, or by feeding upon the manure of infected animals and excreting or vomiting the germs on human food.

(c) Milk is a particularly abundant source of disease, not only because the animal supplying it may be diseased, but because milk, originally pure, may so easily become contaminated in distribution. Further, it is largely consumed by children, invalids, and other susceptible persons, and is an ideal medium for the growth of bacteria, which multiply rapidly in it.

Milk is a source of tuberculosis of the brain, abdomen, bones, joints, and glands of the neck, but the bovine tubercle does not cause lung tuberculosis.

**2. Chemical Additions to Food.** Cases of food poisoning sometimes occur owing to chemicals being added unintentionally during the process of manufacture, or through the action of food on containers. In some cases chemicals are added as preservatives, but not infrequently cases of deliberate adulteration are discovered.

**3. The Social Control of the Food Supply** is exercised by local authorities through their sanitary inspectors.

**Departmental Committee on the Composition and Description of Food.** The Minister of Health and the Secretary of State for Scotland appointed in 1931 a committee under the chairmanship of Sir Frederick J. Willis, K.B.E., C.B., to inquire into the law as to the composition and description of articles of food other than milk, and to report what alterations, if any, in the law or its administration appear to be desirable.

The committee reported in April, 1934. It is considered desirable that the law should be altered so as to enable definitions or standards to be prescribed or compositions to be required for articles of food other than liquid milk. The Committee recommend the repeal of the ancient statutes of pre-Victorian times dealing with the composition of tea and coffee.

**Advisory Committee on Diet.** In June, 1935, it was announced that the Minister of Health and the Secretary of State for Scotland had appointed a Committee, under the Chairmanship of Lord Luke, with the following terms of reference: "To inquire into the facts, quantitative and qualitative, in relation to the diet of the people, and to report as to any changes therein which appear desirable in the light of modern advances in the knowledge of nutrition."

The Committee issued its first Report in April, 1937. It urges a greater consumption of fruit, vegetables, herring and mackerel, decries the eating of too much sugar, recommends that potatoes should be used more extensively in place of highly-milled cereals, but concludes that, despite the need for many readjustments, all in this country, except a relatively small fraction of the population, are obtaining the full amount of calories they require. Recommendations are made for increasing the supply of milk for expectant and nursing mothers, and children of pre-school age.

### FOOD AND DRUGS ACT, 1938

This is the third instalment of the consolidation of local government statutes consequent upon the deliberation of the Local Government and Public Health Consolidation Committee set up in 1930 by the Minister of Health. Although a consolidating measure in the main, several amendments of the law have been introduced.

The registration of dairymen and the issue of licences for the use of special designation for milk are now regulated by this Act as are also the stallages, tolls, and other charges in connection with markets, slaughter-houses, and cold-air stores and licences for slaughter-houses and knackers' yards.

Disputes as to the amount of any compensation payable under the Act are to be determined by arbitration.

The Act gives inspectors power to enter premises to inspect and examine any animal carcass, meat, poultry, vegetables, fruit, corn, bread, milk, or any other article exposed or stored in preparation for sale and intended for human consumption. If the food is diseased, unwholesome, unsound, or unfit for human food, it may be seized and submitted to a Justice of the Peace, who may condemn it and make an order for its destruction. Articles may be ordered to be destroyed or disposed of whether seized or not. Penalties may be imposed upon the person exposing it for sale.

Similar powers exist, under the Adulteration Acts, in cases in which the articles in question are not necessarily injurious to health, but are so different from their apparent character as to constitute a fraud on the public.

The Ministry of Health may make regulations for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food. Many regulations have been issued, such as the Public Health (Imported Food) Regulations, 1937, which came into force on the 1st January, 1938, and prohibit the importation of bacon, ham, and meat products unless accompanied by an official certificate.

The Act affords an efficient safeguard against the exposure for sale of food and drugs in any but a pure and wholesome condition. District councils do not administer this Act, however, unless they have a population of 40,000, the local authorities being the councils of counties and county boroughs. Public Analysts are appointed with powers of sampling goods and purchasers may submit articles for analysis and certification upon payment of a fee. The offences are abstraction of essential ingredients, addition of improper substances, application of a false name and description, selling milk from vehicles not marked with the vendor's name, and selling margarine in wrappers not properly marked "margarine."

X-Ray apparatus is now being used to test tinned food. Cans may be screened or filmed. The latter provides tangible proof with a definite and permanent record of faults. Such methods are more economical than opening tins and sound tins are fit for sale after examination.

The local authority has power to provide apparatus and all necessary works for cleansing shell-fish and make reasonable charges for use of same. Contributions may be made towards the expenses of any authority or person making provision available to the public.

MILK. Two of the greatest needs for the children of the community are improved housing and a larger milk supply. There are regulations as to air space, lighting, ventilation, cleanliness of animals, utensils and premises, in the case of milkshops, dairies, and cowsheds. These places are inspected to see that the regulations are carried out. Other proposals of a far-reaching nature were embodied in the Milk and Dairies (Consolidation) Act, 1915.

The Milk and Dairies (Consolidation) Act, 1915, which came into operation on 1st September, 1925, as provided by the Milk and Dairies (Amendment) Act, 1922, and the Artificial Cream Act, 1929, controlled the milk industry. The former was an Act to consolidate certain enactments relating to milk and dairies in the interests of a pure milk supply. The principal provisions related to registration and inspection, and were of a very far-reaching character. The Milk and Dairies Order, 1926, provided for the registration of all dairies and of all persons carrying on the trade of cow-keeper or dairyman.

These provisions are now incorporated in the Food and Drugs Act, 1938.

Under the Act a "dairy" includes, *inter alia*, all farms from which milk is supplied on or for sale, whether or not the extent of such sale amounts to the carrying on of a trade.

The fee for "pasteurizing" premises must be paid in respect of each shop. (*United Dairies (London) v. Hackney Borough Council*, 1934, 50 T.L.R. 307, 151 L.T. 56.)

*The Food and Drugs (Milk and Dairies) Act*, 1944, was introduced to transfer to the Ministry of Agriculture and Fisheries the powers exercised by local authorities for controlling the conditions under which milk is produced on the farms. Control of distribution from the farm to the consumer is left with the local authorities.

## OFFICERS

The endeavour of society to safeguard and improve its health by concerted effort has led to the development of an expert trained public health service. Every local public health authority must appoint a Medical Officer of Health and a sanitary inspector. The urban authority is limited to one each of these, but may appoint assistants. The rural authority may appoint as many as it thinks desirable. County Councils must appoint a whole-time medical officer. The Local Government Act, 1933, Sect. 107, requires the appointment of a clerk, treasurer and surveyor, although a rural district council need not appoint a surveyor owing to the transfer of road functions to the county council. In fact, however, a modern town has a numerous and skilled staff, including in some cases such officers as district sanitary inspectors, health visitors, and tuberculosis officers. In some towns the inspectors specialize, e.g. on dairies, cowsheds, milkshops, slaughter-houses, meat, fish, and so on.

The pivot of the whole system is the Medical Officer of Health. Generally, his duties are to inform himself of all the influences affecting or threatening to affect injuriously the public health in his district; to advise the council of all sanitary points involved in their action; to deal with cases of infectious diseases; to take steps to remove nuisances injurious to health; to direct the inspection of food; to deal with offensive trades, etc. The County Medical Officer supervises the work of the District Medical Officers.

The Medical Officer of Health must be a legally qualified practitioner with special additional qualifications. It is necessary that all persons engaged in public health work, whether health officers, inspectors, or nurses, should be trained for their special work. The training of physicians for public health work is particularly urgent. Certificates or other evidence of adequate training for this work have been obtainable in the United Kingdom since 1871, when a special examination in State Medicine was inaugurated at Trinity College, Dublin. The Local Government Act, 1933, Sect. 108 (3) (b), prohibits the appointment, as

Medical Officer of Health for any area having a population of 50,000 or more, of any medical practitioner who does not hold a diploma in sanitary science, public health, or state medicine.

The Public Health Act, 1936, Sect. 180, provides that the Minister may make regulations prescribing the qualifications of medical officers and health visitors in pursuance of arrangements made under the Act relating to tuberculosis, or any regulations for the treatment of venereal disease. Under the provisions of the Local Government Act, 1933, Sect. 108, the Minister is empowered to make regulations prescribing the qualifications, duties, mode of appointment, salary and tenure of office of medical officers of health. The regulations relating to the qualifications and duties of medical officers are obligatory but in other cases only as a condition of receiving financial assistance from the county council.

The Medical Officer of Health is required to keep the council informed of the health of the district, to supervise the proceedings, and to have all the powers of the inspector of nuisances. He is required to make an Annual Report and special reports (if necessary) to the Ministry of Health on the health and sanitary conditions of the district. Except in the case of county boroughs, if such reports are satisfactory and certain other conditions are complied with, one-half of his salary and one-half that of the sanitary inspector is refunded by the County Council. The Local Government Act, 1929, provides for the continuance of these payments.

The sanitary inspector is required to search out and report on all nuisances prejudicial to health, and, under instructions, to take proceedings for their abatement. He is required to make reports to the Medical Officer of Health, to procure samples of food for public analysis, and to inspect, condemn, and seize any food exposed for sale which appears to be unfit for human consumption.

The Local Government Act, 1933, Sect. 110, provides that a full-time Medical Officer of Health and sanitary inspector shall be removable by the local authority, with the consent of the Minister of Health, or by the Minister, but not otherwise. If the Medical Officer of Health is restricted from engaging in practice as a medical practitioner, his appointment cannot be for a limited period. The same applies also to the sanitary inspector, if he is required by the terms of his appointment to devote the whole of his time to the duties of his office.

The Local Government Act, 1933, Sect. 111, provides that the council of every county shall, in consultation with the councils of districts, formulate arrangements for securing that every Medical Officer of Health subsequently appointed for a district



shall be restricted by the terms of his appointment from engaging in private practice.

### OTHER PUBLIC HEALTH ACTS

Other Public Health Acts have been passed supplementing and extending the powers of local public health authorities. The following are typical—

1. The Housing Acts, 1919 to 1946, and the Small Dwellings Acquisition Acts, 1899-1935, which are dealt with in Chapter XIII.

2. The Rivers Pollution Prevention Acts, 1876 and 1893, which prohibit the emptying of certain matters into streams, namely solids, sewage, poisonous, noxious and polluting matters.

3. The Public Health (Interments) Act, 1879, which enables a local authority to acquire, construct, and maintain a cemetery either wholly or partly within or without its district; to accept a donation of land for the purpose of a cemetery; and to accept a donation of money or other property for enabling it to acquire, construct, or maintain a cemetery.

4. The Cremation Act, 1902, and the Burial Acts, 1852 to 1906, which are dealt with in Chapter XV.

5. The Public Health Amendment Act, 1890, which is an adoptive Act and enlarges the powers of local authorities, enabling them to deal with danger from wires and other apparatus on or over streets, protection during building operations, the repair of cellars under streets, the safety of platforms used on public occasions, dangers from fun fairs, the provision of cabmen's shelters and refuges in streets, the erection of statues and monuments, the planting of trees in roads, the provision of parks and pleasure grounds and the licensing of premises used for music and dancing.

6. The Private Street Works Act, 1892, which provides an alternative method of making up private streets, and is an adoptive Act. It is dealt with in Chapter XV.

7. The Factories Act, 1937, consolidates, with amendments, the Factory Acts, 1901 to 1929 and other legislation relating to factories, in order to improve arrangements for securing the safety, health and welfare of factory workers. The distinction between factories and workshops and between textile and non-textile factories is abolished. Welfare clauses deal with the supply of drinking water, washing facilities, clothing accommodation, seats for female workers, first aid and similar matters. There are provisions for improving conditions in respect of cleansing, overcrowding, temperature, machinery and the removal of dust and fumes. Provisions as to means of escape in case of fire are



extended and strengthened. The Act came into operation on the 1st July, 1938.

The Act is dealt with fully in *Social Administration* (Pitman).

8. The Public Health Acts Amendment Act, 1907, which is adoptive by either an urban or a rural public health authority, and is construed as one with the Public Health Acts. The Act as amended deals with Streets and Buildings; Infectious Diseases; Recreation Grounds; Police; Fire Brigade; Sky Signs; and Miscellaneous powers.

9. The Blind Persons Acts, 1920 and 1938, continue to operate until the appointed day under the National Health Services Act, 1946. These Acts make local authorities, viz. the County Councils and County Borough Councils, responsible for the general care and training of the blind. Local authorities are required to prepare schemes working in co-operation, so far as possible, with the voluntary agencies engaged in work among the blind. Assistance to blind persons and their dependants, other than institutional and medical treatment, must be provided under these Acts and not under the Poor Law.

10. The Public Health Act, 1925, which is adoptive and enlarges the powers of local authorities in respect of drinking fountains, fire alarms, naming streets, numbering houses, surface draining, bridges over streets, new streets, street improvements, and parking places.

11. The Lead Paint (Protection Against Poisoning) Act, 1926, which makes better provision for the protection of persons employed in or in connection with the painting of buildings, including fixtures.

12. The Pharmacy and Poisons Act, 1933, which amends the Pharmacy Acts and contains important provisions regulating the sale of poisons, including the creation of an Advisory Committee to be called the Poisons Board.

13. The Public Health (Drainage of Trade Premises) Act, 1937, confers a right to discharge trade effluents into public sewers, subject to the consent and conditions imposed by the local authority.

### CANCER ACT, 1939

This Act is a measure to make further provision for the treatment of cancer, to authorize the Minister of Health to lend money to the National Radium Trust, to prohibit certain advertisements relating to cancer, and for other purposes. Under the Act it is the duty of every county and county borough council to submit to the Minister of Health schemes showing their arrangements for ensuring that all persons suffering from cancer shall receive whatever treatment is best fitted to their condition. These

schemes will be worked out after consultation with the voluntary hospitals and medical practitioners in the area and with the Radium Commission. Local authorities can combine in joint committees on which persons outside the local authorities can be co-opted.

Additional financial liabilities imposed on local authorities by the Act will be assisted by Exchequer grants—at first by specified grants to each authority and later by an addition to the block grant under the Local Government Act, 1929.

The expenditure to be taken into account in determining the grant will be the additional expenses incurred in the treatment of cancer in excess of such expenses in the year ending 31st March, 1938. It was estimated that the Exchequer contribution when the service is in full operation will be £300,000 per annum for England and Wales and £50,000 for Scotland.

In order reasonably to meet immediate future needs there will be required twelve new treatment centres, 1,000 additional beds, and 300 to 350 consultation centres for diagnostic and other purposes.

In the provision of radium it was proposed to work through the two existing organizations, the National Radium Trust and the Radium Commission. The Act provides that the Minister may, from moneys voted by Parliament, lend money to the Trust up to a maximum of £500,000.

The Act is amended from the appointed day under the National Health Services Act, 1946.

## CONCLUSION

In the last half century the public health, however measured, has enormously improved. The death rate at each age-period right up to old age has decreased, and average life has been lengthened by about twenty years. Not only so, but the balance of evidence favours the conclusion that the average standard of health has been raised, for, while many lives have been extended, many others—almost certainly a much larger number—have been saved from the malnutrition, defective hygiene, and actual diseases which cause deterioration of health. Furthermore, the greatest saving has been in young lives, and the years of life saved are being lived chiefly at ages 15 to 65, when, economically and socially, they have the highest value. Of communicable diseases in this country, we know that tuberculosis claims only half its former number of victims, that typhus fever has been almost extinguished, and that typhoid fever is but a shadow of its former self.

In the thirty years 1841-70, the death rate averaged 21.1 per

1,000, while in recent years it has been only 9 per 1,000; and the actual number of deaths in 1931 was smaller than in 1867, when the population was only about 56 per cent of that estimated for 1925.

- Apart from the consequences of war, historians are likely to pronounce the last twenty-five years as outstanding in the improved level of health of civilized communities made possible by the increase of knowledge won by medical research in this and other countries. Infantile mortality, which is believed to have been 200 per 1,000 about one hundred years ago, has been reduced to about 50. Maternal mortality, which was 4·12 in 1916, is now under 3.

### BEVERIDGE REPORT AND GOVERNMENT WHITE PAPER OF A NATIONAL HEALTH SERVICE

These are considered at length in *Social Administration*, Fourth Edition (Pitman).

### FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

#### Part I. Proposals Respecting Functions of Local Authorities.

##### DISTRIBUTION OF CERTAIN FUNCTIONS BETWEEN LOCAL AUTHORITIES

1. *Administration of Food and Drugs (Adulteration) Act, 1928, and the Appointment of Public Analysts.* The Commissioners recommended, *inter alia*, that—

(i) The administration of the Food and Drugs (Adulteration) Act, 1928, and the appointment of a public analyst should be assigned to County and County Borough Councils.

(ii) Councils of county districts should retain the right to obtain samples and take proceedings.

(iii) A County Council should be empowered to contribute towards the costs incurred by a council of the county district. (This is provided by the Local Government Act, 1929.)

2. *Administration of the Milk and Dairies Acts.* In view of the short time during which the Milk and Dairies Acts and Orders have been operative the Commissioners do not recommend any further reassignment of functions at this stage.

But see Food and Drugs Act, 1938, *ante*.

## CHAPTER XIII

### HOUSING

The Housing Acts now mean the Housing Acts, 1936 to 1944, together with the temporary and unrepealed provisions of—

- The Housing, Town Planning, etc., Act, 1919;
- The Housing, etc., Act, 1923;
- The Housing (Financial Provisions) Act, 1924;
- The Housing (Rural Authorities) Act, 1931;
- The Housing Acts, 1925, 1930 and 1935; and
- The Housing (Financial Provisions) Act, 1938;
- The Housing (Temporary Provisions) Act, 1944;
- The Housing (Temporary Accommodation) Act, 1944;
- The Housing (Temporary Accommodation) Act, 1945;
- The Building Materials and Housing Act, 1945;
- The Housing (Financial and Miscellaneous Provisions) Act, 1946.

Although the Housing Act, 1936, purports to be a consolidating measure, quite a number of provisions are left outstanding in previous enactments. In addition to those mentioned above, there is the Housing Act, 1914, which authorized the provision of houses for persons employed by or on behalf of Government Departments. There are also the Small Dwellings Acquisition Acts, 1899 to 1923.

### THE MODERN PROBLEM AND THE LEGISLATURE

The problem of housing is due among other causes to past negligence on the part of the legislature, who first approached the subject on national lines in 1851. The increased cost of building, higher rates, attractiveness of alternative investments, and more stringent building regulations checked the supply of houses even before the War of 1914-18. The cessation of building operations during that war, and the discouragement of private enterprise, consequent upon the difficulty of commanding an economic rent, resulted in a still further reduction in the supply of houses. During the period which immediately followed the 1914-18 War the cost of housing increased, owing to the heavy demands on the industry, the increased cost of labour, and the growth of building "rings."

While these causes were responsible for placing a check on the supply, public interest in the problem was awakened by the introduction of legislation, and the growth of sanitary knowledge

with a recognition of the connection between bad housing and ill-health. It is generally admitted that neglect of housing and town planning in the past is the prime cause of those narrow and insanitary streets and courts which are the usual heritage of an old town. These slums place a great burden of unnecessary suffering on the unfortunate members of the community who inhabit them. The creation of Housing Trusts consequent upon the greater philanthropic interest in the welfare of the working classes has in some instances formed models for further action. The demand for a higher standard of life has included that of an improvement in housing conditions.

At the close of the War of 1914-18 the nation was faced with a shortage of dwelling-houses estimated at about 800,000, together with an annual demand of approximately 100,000 new houses. To meet this demand the State entered into a financial partnership with local authorities and undertook to bear any burden in excess of a local rate of 1d. in the £ (Housing, Town Planning, etc., Act, 1919). Large subsidies were also offered to private builders (Housing (Additional Powers) Act, 1919). The Acts of 1923 and 1924 provided assistance on less generous terms. (See Chapter XXVI.) Attention had been directed to meeting the banked up demand for houses but the serious problem of the slum area now needed more urgent consideration. The law was consolidated in 1925, but this Act has, in its turn, been repealed and re-enacted with amendments in the Act of 1936.

The Housing Act, 1930, had for its principal objects the simplification of the procedure and the facilitating of the task of clearing slums (clearance areas), and the prevention of the creation of more slum areas by dealing with areas deteriorating into slums (improvement areas) by opening out those areas. The necessity for a formal scheme was dispensed with and the procedure under which an area might be declared insanitary and that under which such an area should be dealt with when cleared were distinguished.

The Report of the "Ray" Committee on Local Expenditure pointed out that the gap between the rents obtainable for houses built with and without state assistance had been so narrowed down by the fall in building costs and interest rates that the time had arrived for the restriction of such assistance to purposes of re-housing persons dispossessed from insanitary houses. The Housing (Financial Provisions) Act, 1933, gave effect to this recommendation. Whether subsidies are provided or not, it is still the statutory duty of local authorities to supply any deficiency in accommodation for the working classes in default of private enterprise. On the 6th April, 1933, the Minister

issued Circular 1331, advocating a concentration by local authorities upon the work of slum clearance and suggesting the fixing of a time-table for the progress and completion of this work.

### THE REPORT OF THE DEPARTMENTAL COMMITTEE ON HOUSING, 1933

In March, 1933, the Minister of Health appointed a Committee under the chairmanship of the Right Hon. the Lord Moyne, D.S.O., to consider and report (a) what, if any, further steps are necessary or desirable to secure the maintenance of a proper standard of fitness for human habitation in working-class houses which are neither situate in an area suitable for clearance under Part I of the Housing Act, 1930, nor suitable for demolition under Sect. 19 of that Act; and (b) what, if any, further steps are necessary or desirable to promote the supply of houses for the working classes, without public charge, through the agency of public utility societies or other bodies subject to similar limitations operating in particular areas or otherwise. The Committee issued its Report in August, 1933. (Cmd. 4397.)

Proposals were put before the Committee for the formation of a National Housing Corporation to undertake the work of providing working-class houses on a national scale. The Committee did not accept these proposals. For one reason they were outside their terms of reference.

They made it clear that they were opposed to the policy of reconditioning as a cheap alternative to demolition and replacement. They considered the existing law adequate to enforce landlords to keep houses fit for human habitation and gave their reasons why it is not effectively enforced. They saw no practical way of securing improved and enlightened management on a large scale except by the acquisition of the properties concerned.

They proposed that landlords should be given the statutory right to submit to the Minister voluntary schemes of clearance and improvement. Where an owner reconditioned his house to their satisfaction, local authorities should be empowered to give him a licence to the effect that the property would be free from clearance or demolition for a fixed period without full compensation. In all other cases, where houses may be made fit by reconditioning and to which a probable life of at least twenty years can be given, they recommended that powers should be given to local authorities to acquire them by compulsory powers of purchase. A new method of compensation was recommended in such cases called the "refund basis." They proposed that dispossessed owners should be paid what they themselves paid for the property, or the value accepted for death duties if they inherited it, or

adopted for stamp duty if they acquired it by deed or gift. As an alternative basis they mentioned the market value after allowing for the cost of reconditioning and discounting the value of illegal use or overcrowding.

The Committee expressed the view that normally, local authorities should not manage these properties themselves but should place them under the control of approved public utility societies. Where no suitable society exists, nor could readily be formed, the properties should be vested in house management commissioners appointed by the local authority.

Only where neither of these alternatives is practicable should the local authority hold and manage the properties themselves. Management should be based upon the Octavia Hill system, and, wherever practicable, women estate managers should be employed.

The Committee recommended the appointment by the Minister of Health of a strong Central Public Utility Council consisting of five persons, paid on a part-time basis, with a staff appointed by the Minister. The principal functions of such a council would be—

1. To stimulate the formation of public utility councils and to supervise, help and guide such councils.
2. To work in close co-operation with and undertake part of the work of the Garden Cities and Town Planning Association.
3. To advise the Minister as to the—
  - (a) approval of societies;
  - (b) acquisition, repair, and management of houses;
  - (c) advances to be made to societies.
4. To give advice on house management.
5. To ensure an adequate supply of trained property managers.
6. To acquire information on reconditioning.
7. To co-ordinate housing activities.

Although their terms of reference particularly excluded the recommendation of a public charge, the Committee proposed that an Exchequer grant should be available in urban areas in aid of re-housing accommodation provided to abate overcrowding. For tenements of more than three stories on expensive sites they advised a subsidy of £12 per tenement for sixty years, and in other cases £5 per house for sixty years.

The Moyne Report aroused some opposition from the local authorities and their associations. The Moyne Committee admitted that the existing law is adequate for dealing with this problem; therefore, if properly enforced, the existing machinery was sufficient and no further powers were desirable or necessary. Owners of dilapidated properties should be required to execute necessary repairs and maintain their property in a proper

condition. Local authorities have power to lend them the necessary money for the purpose, and it is contended that this is a better way than spending public money in acquiring the properties outright. The operations of public utility societies have not been very extensive. The general policy of Parliament in recent years has been to get rid of *ad hoc* authorities, whereas the whole tenor of the Moyne Report is a direct reversal of this policy. The basis of compensation recommended has been attacked, on the ground that it is entirely in favour of the owners of property who permit their houses to become a menace to public health. Such terms might hold out an inducement to an owner to allow his property to fall into disrepair in the hope that it may be acquired on most advantageous terms. It will be observed that the provisions of the Housing Act, 1935, differed in many respects from these proposals.

### THE HOUSING ACT, 1935

The slum clearance effort had already been fully organized. Progress was, therefore, already better than that scheduled under the five-year plan for the elimination of slums. That meant that the attack on overcrowding could be launched. The Registrar-General's analysis of the Census figures of 1931 showed that the problem was great, but not unmanageable, and it was worst in the central areas of towns and conditions there necessitated re-housing on the site. Preliminary and extensive negotiation with local authorities had resulted in substantial agreement.

The Government's proposals for slum clearance and re-housing, embodying the principle of a fit house for every person to live in, were outlined in March, 1934, by the Minister of Health (Sir Hilton Young). The proposals were—

1. Re-housing of overcrowded families at or near the site of the original home.
2. A large measure of building upwards in flats, involving costlier sites and structures.
3. Government subsidy or grant imposing a larger burden on the Exchequer.
4. Re-development and re-planning of the areas to accompany re-housing.
5. Compulsory powers for local authorities to acquire overcrowded and other properties in re-development schemes.
6. Compulsory powers for purchase of properties suitable for re-conditioning.
7. Optional powers to local authorities to create special bodies of local commissioners to take over the management of publicly owned housing estates.



"The problem of dealing with unhealthy and insanitary areas is so complicated and difficult that it cannot be solved by any one panacea. To insure success the problem must be attacked from every possible direction by means of every possible power or influence." (Unhealthy Areas Committee.)

Four main groups of provisions were made, viz.—

- I. The maintenance and repair of individual houses;
- II. The re-development of areas becoming insanitary;
- III. The clearance of slum areas; and
- IV. The provision of new houses.

The first group may be further subdivided into four, viz.—

1. Repairs to individual houses;
2. Closing orders for parts of buildings;
3. Demolition Orders; and
4. Appeals.

The larger urban authorities are faced with the problem of deciding whether to rehouse their populations in suburban houses or town tenements. The latter system provides accommodation near the labourer's place of employment, but is much more costly than building houses in suburbs. In the latter case, however, the cost of transport has to be considered and ancillary services, such as new roads, clinics, baths, libraries, etc., must be considered. To meet the needs of those authorities who find it essential to build high flats on costly sites the Act of 1935 provided a new and more generous scale of subsidies.

The general plan of the Act was—

- (1) to lay down a standard;
- (2) to enjoin a survey;
- (3) to evoke re-housing and re-development schemes;
- (4) to confer all necessary powers on local authorities; and
- (5) to grant a subsidy. (See Chapter XXVI.)

The standard chosen was not an ultimate ideal, but it was a good practical beginning of the effort to enforce by law universally the measure of sex segregation essential to decency and a measure of space essential to health and comfort.

The surveys, which local authorities have undertaken, have shown the size of the problem.

The schemes included much building of modern blocks of flats, generally not higher than four stories, which new methods of design and construction have made popular. The powers facilitate the realization of the hope that local authorities will take over the whole of central areas, re-plan them, and finally re-develop them. Re-development includes re-conditioning on the lines recommended by the Moyne Committee.

The subsidy was directed straight to the problem of re-housing

the worst-paid workers on the most expensive sites, where cheap sites were not available. It was payable wherever necessary to bring down rents within the means of these poor tenants; and calculated to make the average rent rather under 10s. a week, inclusive of rates, in most urban areas; and between 3s. and 5s. a week in rural areas. The urban average might be rather exceeded in London and in some other places where rents are relatively high.

The decline in the average size of families shows that in many cases a smaller and therefore cheaper house is adequate. The provision for pooling of subsidies introduced by this Act enables local authorities to abolish differential rents for the same type of house.

In rural areas there is a great variety of local circumstances, and a special committee has been set up to settle the rate of subsidy in each area. Less important provisions of the Act included—

- (1) the encouragement of public utility societies;
- (2) the discretionary power to establish management commissions;
- (3) the formation of a Central Advisory Council to foster structural improvements, standardization, and the pooling of orders for material;
- (4) the grant of permission to owners to carry out their own renovations; and
- (5) the amendment of the law of compensation.

As already stated, most of the prior legislation has been consolidated in the Housing Act, 1936.

### HOUSING ACT, 1936

The Act is divided into eight parts, 191 sections, and twelve schedules.

- Part I. Local Authorities for Purposes of this Act.
- Part II. Provisions for securing the Repair, Maintenance and Sanitary Condition of Houses.
- Part III. Clearance and Re-development.
- Part IV. Abatement of Overcrowding.
- Part V. Provision of Housing Accommodation for the Working Classes.
- Part VI. Financial Provisions.
- Part VII. General.
- Part VIII. Supplemental.

The Schedules are as follows—

- First: Compulsory purchase orders.
- Second: Validity and date of operation of certain orders.
- Third: Clearance Orders.
- Fourth: Rules as to the assessment of compensation where land purchased compulsorily under Part III otherwise than at site value or under Part V.
- Fifth: Number of persons permitted to use a house for sleeping.
- Sixth: Computation of Government contribution towards provisions of flats on sites of high value and of value of sites.
- Seventh: Determination of the amount of certain Government contributions payable under Sect. 7 of the Act of 1919 and sub-sect. (3) of Sect. 1 of the Act of 1923.
- Eighth: Local authorities' contributions.
- Ninth: Local housing bonds.
- Tenth: Modification as to London of financial provisions.
- Eleventh: Redhousing by undertakers in case of displacement of persons of the working classes.
- Twelfth: Enactments repealed.

The Act does not extend to Scotland nor to Northern Ireland.

## CENTRAL AUTHORITY

The Minister means the Minister of Health. (Sect. 188 (1).)  
The Minister acts through the Housing Division of the Ministry.

A Central Housing Advisory Committee is constituted in accordance with the provisions of Sect. 135. (See *post*.)

## PART I

### LOCAL AUTHORITIES FOR PURPOSES OF THIS ACT

Local authorities for the purposes of this Act—

(1) As respects England and Wales: the council of the borough, urban district, or rural district.

(2) As respects the administrative county of London—

(a) As respects the City of London: the Common Council.

(b) As respects any other part of the Administrative Council of London: the Metropolitan Borough Council or the London County Council, as hereinafter provided. (Sect. 1.)

## PART II

PROVISIONS FOR SECURING THE REPAIR,  
MAINTENANCE AND SANITARY CONDITION OF  
HOUSES

## OBLIGATION OF LESSORS OF SMALL HOUSES

*Conditions to be implied on the letting of small houses—*

- (i) County of London, £40 rental.
- (ii) Elsewhere, £26 rental.

That the house will be kept by the landlord during the tenancy in all respects reasonably fit for human habitation. (Sect. 2 (1).)

The expression "landlord" means any person who lets for human habitation to a tenant any house under any contract referred to in this section, and includes his successors in title, and the expression "house" includes part of a house. (Sect. 2 (3).)

The Court of Appeal decided that an owner who was under covenant with his tenant to keep the outside walls and roofs properly repaired—fair wear and tear excepted—was not required to make good defects caused by the elements. (*Taylor v. Webb*, [1937] 1 All E.R. 590.)

Defects are not confined to "sanitary defects," but include, for instance, defective ceiling plaster which falls.

The Ministry of Health, in their "Manual on Unfit Houses," indicate a standard of fitness which should be regarded as a minimum standard for a habitable house.

In that Manual it is laid down that a fit house should—

- (1) Be free from serious dampness.
- (2) Be satisfactorily lighted and ventilated.
- (3) Be properly drained, and provided with adequate sanitary conveniences, and with a sink and suitable arrangements for disposing of slop water.
- (4) Be in good general repair; and
- (5) Have—
  - (a) a satisfactory water supply;
  - (b) adequate washing accommodation;
  - (c) adequate facilities for preparing and cooking food;
  - (d) a well-ventilated store for keeping food.

These requirements have been incorporated in and augmented by Sect. 188 of the Housing Act, 1936, which requires, in addition, the paving and drainage of courts, yards, and passages.

## DEFINITIONS

The expressions "house" or "dwelling-house" include, unless the context otherwise requires, any part of a building which is

occupied or intended to be occupied as a separate dwelling. (Sect. 188.)

In *Arlidge v. Tottenham U.D.C.*, [1922] 2 K.B. 719, the Divisional Court held that the expression "any house suitable for occupation by persons of the working classes" must be construed in its natural and ordinary sense, without reference to any particular rental values.

It is to be noticed, however, that the Settled Land Act, 1925, Sect. 117 (xxv), defines "small dwellings as meaning dwelling houses of a rateable value not exceeding £100 per annum."

In Sects. 9 to 17 of the Act "house" includes a hut, tent, caravan or other temporary or moveable form of shelter used for human habitation. Neither "buildings" nor "temporary buildings" are defined by the Public Health Acts. Where a dispute arises the meaning and application of the phrase can be decided by the Courts alone. (*Rodwell v. Wade*, 1925, 23 L.G.R. 174; *Keeling v. Wirral R.D.C.*, 1925, 23 L.G.R. 201.)

The word "appurtenances" in the definition of "house," as defined in Section 188 of the Housing Act, 1936, does not include land not falling within the curtilage of the house. (*Trim v. Sturminster R.D.C.*, [1938] 2 All E.R. 168.)

#### APPLICATION OF FOREGOING SECTION TO HOUSES OCCUPIED BY AGRICULTURAL WORKERS OTHERWISE THAN AS TENANTS

In such cases the section shall apply with the substitution of "employer" for "landlord" and such other modifications as may be necessary. (Sect. 3.)

INFORMATION to be given to tenants of working-class houses as to the name and address of—

- (i) The Medical Officer of Health for the District; and
- (ii) The landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation.
- (iii) Permitted number of Persons.

This information shall be—

- (a) inscribed in the rent book, or,
- (b) where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy. (Sect. 4.)

#### DUTY OF LOCAL AUTHORITY IN REGARD TO INSPECTION OF HOUSES

(1) It shall be the duty of every local authority to cause an inspection of their district to be made from time to time with a

view to ascertaining whether any house therein is unfit for human habitation, and for that purpose it shall be the duty of the authority, and of every officer of the authority, to comply with every such regulation and to keep such records as the Minister may prescribe. (Sect. 5.)

(2) *The Housing Consolidated Regulations* require regular and systematic inspection of dwelling-houses with a view to the remedying of defects "which may tend to render the house dangerous or injurious to the health of an inhabitant."

(3) The expression "sanitary defects" includes lack of air space, ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or of other conveniences, and inadequate paving or drainage of courts, yards, or passages. (Sect. 188 (1).)

(4) In determining for the purposes of this Act whether a house is fit for human habitation, regard shall be had to the extent, if any, to which by reason of dis-repair or sanitary defects the house falls short of the provisions of any by-law in operation in the district, or of the general standard of housing accommodation for the working classes in the district. (Sect. 188 (2).)

#### **POWER OF LOCAL AUTHORITIES TO MAKE AND ENFORCE BY-LAWS AS TO WORKING CLASS HOUSES**

(1) By-laws as to working-class houses may be made and enforced with respect to the subject-matter referred to in Sect. 6 (1).

(2) As from the appointed day, within the meaning of Part IV of this Act, by-laws respecting the numbers of persons who may occupy such a house shall cease to have effect. (Sect. 6 (2).)

(3) By-laws may be limited to houses intended or used for occupation by the working classes and let in lodgings or occupied by members of more than one family. (Sect. 6 (3).)

#### **ENFORCEMENT OF EXECUTION OF WORKS TO COMPLY WITH BY-LAWS**

(1) By-laws may impose the duty upon the owner within the meaning of the Public Health Acts of executing any work required to comply therewith.

(2) For the purpose of discharging any duty so imposed, the owner or other person may at all reasonable times enter upon any part of the premises.

(3) Where the owner or other person has failed to execute any works which he has been requested to execute under any such by-laws—

(a) the local authority by whom the by-laws are enforced

may, after giving to him not less than twenty-one days' notice in writing, themselves execute the works and recover the expenses; and

(b) for that purpose the provisions of Sect. 10 of this Act with respect to the enforcement of notices requiring the execution of works, and the recovery of expenses by local authorities shall apply with such modifications as may be necessary. (Sect. 7.)

## LONDON

Special provisions are contained in Sect. 8 in regard to the making and enforcing of by-laws in London.

## REPAIR, DEMOLITION AND CLOSING OF INSANITARY PREMISES

### POWER OF LOCAL AUTHORITY TO REQUIRE REPAIR OF INSANITARY HOUSE

- (1) Where a local authority, upon consideration of
- (a) an official representation, or
  - (b) a report from any of their officers, or
  - (c) other information, in their possession,

are satisfied that any house which is occupied or is of a type suitable for occupation by persons of the working classes is in any respect unfit for human habitation, they shall, unless they are satisfied that it is not capable at a reasonable expense of being rendered so fit,

(i) serve upon such person as is hereinafter mentioned a notice requiring him, within such reasonable time, not being less than twenty-one days, as may be specified in the notice, to execute the works specified in the notice, and

(ii) stating that in the opinion of the authority, those works will render the house fit for human habitation.

(2) In addition to serving a notice on the person having control of the house, the local authority may serve a notice on any other person having an interest in the house, whether as freeholder, mortgagee, lessee, or otherwise.

(3) In determining whether a house can be rendered fit for human habitation at a reasonable expense, regard shall be had to the estimated cost of the works necessary to render it so fit.

(4) For the purpose of this Part of this Act, the person who receives the rack rent of a house, whether on his own account or as agent or trustee for any other person, or who would so receive it if the house were let at a rack rent shall be deemed to be the person having control of the house. (Sect. 9.)

**ENFORCEMENT OF NOTICE REQUIRING EXECUTION OF WORKS**

(1) If a notice under the last foregoing section is not complied with, then—

- (a) after the time specified in the notice, or
- (b) if an appeal has been made, and has been confirmed with or without modification, after the expiration of twenty-one days from the final determination of the appeal, or
- (c) of such longer period as the court may fix, the local authority may themselves do the work.

(2) The local authority may give notice of their intention so to do.

(3) Any expenses incurred by a local authority under this section, together with interest, may be recovered by them by action or summarily as a civil debt. The rate of interest to be charged is fixed from time to time by Order issued by the Minister of Health with the approval of the Treasury.

(4) In all summary proceedings by the local authority for the recovery of any such expenses, the time within which proceedings may be taken shall be reckoned from the date of the service of the demand.

(5) The local authority may by order declare any such expenses to be payable with interest by weekly or other instalments within a period not exceeding thirty years.

(6) The amount of any expenses and interest thereon due to a local authority under this section shall be a charge on the premises in respect of which the expenses were incurred as provided by the Law of Property Act, 1925.

(7) No action taken under this, or the last preceding section, shall prejudice or affect any other powers of the local authority, or any remedy available to the tenant of a dwelling-house against his landlord, either at common law or otherwise. (Sect. 10.)

A local authority were unable to recover their expenses of repairing defendant's houses because their demand was not signed by the Clerk to the Authority or his Deputy as required by the Housing Act, 1925, Sect. 120, and the amount spent on each house was not shown as required under the Housing Act, 1930, Sect. 22. The defendants had a right of appeal to the County Court, which they had not exercised. It was held that this failure could not avail to make a bad demand a good one. (*West Ham Corporation v. Charles Benabo & Sons*, [1934] 2 K.B. 253.) The relevant sections are now 1936 Act, Sects. 164 and 91, but the latter stipulation has not been re-enacted.



## POWER OF LOCAL AUTHORITIES AS TO NUISANCES

As an alternative to the use of their powers under the Housing Acts, many local authorities prefer to proceed under the Public Health Acts, as to nuisances.

The Public Health Act, 1936, provides that the local authority may require certain matters to be dealt with summarily as "statutory nuisances," *inter alia*, any premises in such a state as to be prejudicial to health or a nuisance. (Sect. 92.) In default of the occupier, the local authority may do the work themselves and recover the expenses from him.

Under the nuisance provisions of Part III of the Act, nuisances required to be dealt with summarily include any premises where a nuisance proved to exist is such as to render a building, in the opinion of the court, unfit for human habitation. The nuisance order may prohibit the use of the building for that purpose until a court of summary jurisdiction, being satisfied that it has been rendered fit for human habitation, withdraws the prohibition. (Sect. 94 (2).)

The Public Health (London) Act, 1936, provisions are generally similar to those of the Public Health Act, 1936, but Sect. 15 contains express provisions under which a person may be fined for wilfully damaging, stopping up, or improperly using any drain, sanitary convenience, or water supply.

## POWER OF LOCAL AUTHORITY TO ORDER DEMOLITION OF INSANITARY HOUSE

(1) Where a local authority, upon consideration of—

- (a) An official representation; or
- (b) A report from any of their officers; or
- (c) Other information in their possession,

are satisfied that any house which is occupied, or is of a type suitable, for occupation by persons, of the working-classes is

- (i) unfit for human habitation; and
- (ii) is *not* capable at a reasonable expense of being rendered so fit,

they shall serve upon the person having control of the house, upon any other person who is the owner thereof, and so far as is reasonably practicable to ascertain such persons upon every mortgagee thereof, notice of the time and place at which the condition of the house and any offer with respect to the carrying out of the works, or the future user of the house which he may wish to submit will be considered by them; and every person upon whom such a notice is served shall be entitled to be heard when the matter is so taken into consideration.

(2) A person upon whom notice is served under the foregoing subsection shall, if he intends to submit an offer with respect to the carrying out of the works,

(a) within twenty-one days from the date of the service of the notice upon him, serve upon the authority notice in writing of his intention to make such an offer, and

(b) shall within such reasonable period, as the authority may allow, submit to them a list of the works which he offers to carry out.

(3) The authority may, after consultation with any owner or mortgagee, accept an **undertaking** that he will within a specified time carry out such works as will, in the opinion of the authority, render the house fit for human habitation, or that it shall not be used for human habitation until the authority cancel the undertaking.

(4) If—

(a) No such undertaking is accepted by the authority, or

(b) the undertaking is not complied with within the specified time, or

(c) the house is at any time used in contravention of the terms of the undertaking,

the local authority shall forthwith make a

**Demolition Order** requiring that the house shall be—

(i) vacated within a period to be specified in the order, not being less than twenty-eight days from the date on which the order becomes operative, and

(ii) demolished

(a) within six weeks after the expiration of that period, or

(b) if the house is not vacated before the expiration of that period, within six weeks after the date on which it is vacated, or

(c) in either case, within such longer period as in the circumstances the local authority deem it reasonable to specify.

(Sect. 11.)

The local authority must consider judicially the proposals put forward by the applicant. (*Broadbent v. Rotherham Corporation*, [1917] 2 Ch. 31.)

**Demolition of Insanitary House.** Under the Housing Act, 1936, Sect. 11, the housing authority may order the demolition of any house of a type suitable for occupation by persons of the working classes which is so insanitary as to be unfit for human habitation. There is no existing general definition of the term "working classes." An owner appealed against a demolition order on the

ground that a cottage let together with farm buildings, cow-stalls, and about ten acres of grass-land could not be considered to be within the scope of one suitable for the working classes. The Court of Appeal decided that the whole of the ten acres were not appurtenances to the cottage so as to exclude it from the operation of the Act. It was the cottage together with such premises as formed part of the curtilage of the cottage which had to be taken into consideration and the land outside the curtilage was not appurtenant to the house. (*Trim v. Sturminster R.D.C.*, [1938] 2 All E.R.)

### POWER TO MAKE A CLOSING ORDER AS TO PART OF A BUILDING

(1) A local authority may take the like proceedings in relation to any part of a building as they are empowered to take in relation to a house, subject, however, to the qualification that they shall make a Closing Order prohibiting the use of the part of the building or of the room, as the case may be, for any purpose other than a purpose approved by the local authority.

(2) A room the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, or more than three feet below the surface of any ground within nine feet of the room, shall for the purposes of this section be deemed to be unfit for human habitation, if either—

(a) the average height of the room from floor to ceiling is not at least seven feet; or

(b) the room does not comply with such regulations as the local authority with the consent of the Minister may prescribe for securing the proper ventilation and lighting of such rooms, and the protection thereof against dampness, effluvia, or exhalation. (Sect. 12.)

### PROCEDURE WHERE DEMOLITION ORDER IS MADE

(1) When a Demolition Order has become operative, the owner or owners shall demolish that house within the time limited in that behalf by the order; and if the house is not demolished within that time, the local authority shall enter and demolish the house and sell the materials thereof.

(2) Any expenses incurred by the local authority, after giving credit for any amount realized by the sale of materials, may be recovered by them as a simple contract debt from the owner of the house in the County Court within the jurisdiction of which the premises are situate;

(3) Any surplus in the hands of the local authority shall be paid by them to the owner of the house.

(4) The County Court within the jurisdiction of which the house is situate shall have jurisdiction to hear and determine any proceedings under subsection (2) of this section, and shall have jurisdiction under the Trustee Act, 1925, Sect. 63, in relation to any such surplus as is mentioned in subsection (3) of this section.

(5) A County Court judge in determining the shares in which any expenses shall be paid, or any surplus shall be divided between two or more owners of a house, shall have regard to their respective interests, obligations and liabilities, and all the other circumstances of the case. (Sect. 13.)

#### PENALTY FOR USING PREMISES IN CONTRAVENTION OF CLOSING ORDER OR OF AN UNDERTAKING

Any person, who, knowing that—

(1) A Closing Order has become operative and applies to the premises, or

(2) An Undertaking has been given not to use the premises for purposes specified in the *Undertaking*,  
uses these premises in contravention of the terms of the Order or Undertaking, or permits them to be so used, shall be liable on summary conviction to a fine not exceeding twenty pounds and to a further penalty of five pounds for every day after conviction. (Sect. 14.)

Where an Undertaking has been given, nothing in the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1933, or in any enactments amending those Acts, shall prevent any owner of those premises from obtaining possession thereof. (Sect. 156 (1).)

There is no specific statutory requirement to provide re-housing accommodation in respect of persons displaced as a result of action taken in respect of individual houses unfit for habitation.

Where an owner undertook to make one fit house out of two back-to-back houses the County Court can accept an undertaking. (*Johnson v. Leicester Corporation*, [1934] 1 K.B. 638; 151 L.T. 8.)

#### APPEALS

(1) Any person aggrieved by—

(a) a notice requiring the execution of works;

(b) a demand for the recovery of expenses incurred by a local authority in executing works specified in any such notice ;

(c) an order made by a local authority with respect to any such expenses ;

(d) a demolition order made under this Part of this Act ;

(e) a closing order, or a refusal to determine a closing order ;

(f) a withholding of approval in relation to the use for any purpose of premises in respect of which a closing order is in force ;

may, within twenty-one days after the date of the service of the notice, etc.,

(i) Appeal to the County Court within the jurisdiction of which the premises to which the notice, etc., relates are situate, and

(ii) no proceedings shall be taken by the local authority to enforce any notice before the appeal has been finally determined.

(2) An appeal to a County Court shall, notwithstanding anything in Sect. 19 of the Administration of Justice Act, 1925, be tried without a jury.

(3) Rules made under the County Courts Act, 1934, Sect. 99, shall make provision with respect to inspection of the premises by the judge.

(4) An appeal shall lie on any point of law from a decision of a County Court judge to the Court of Appeal.

(5) Any notice, etc., shall, if no such appeal is brought, become operative on the expiration of the period of twenty-one days.

The house must be of "working class" type. The Order is subject to alteration or variation by information submitted any time before final decision. The County Court judge need not restrict himself to questions of law, but may deal with financial and technical matters. (*Fletcher v. Ilkeston Corporation*, [1932] C.A. L.G.R. Vol 30, p. 6.)

## POWER OF LOCAL AUTHORITY TO ACQUIRE AND REPAIR CERTAIN HOUSES

Where a person has appealed against a notice under this Part of this Act requiring the execution of works to a house, and the judge or court in allowing the appeal has found that the house cannot be rendered fit for human habitation at a reasonable expense, the local authority

(a) may purchase that house by agreement, or

(b) may be authorized to purchase it compulsorily in accordance with the provisions of this section ; and

(c) if they purchase the house compulsorily, they shall forthwith execute all such works as were specified in the notice against which the appeal was brought. (Sect. 16.)

#### **POWER OF LOCAL AUTHORITY TO CLEANSE FROM VERMIN BUILDING TO WHICH DEMOLITION ORDER APPLIES**

If it appears to the local authority that a house, to which a demolition order applies, requires to be cleansed from vermin, the authority may at any time between the date on which the order is made, and the date on which it became operative, serve notice in writing on the owner or owners of the house that the authority intend to cleanse it before it is demolished. (Sect. 17.)

#### **GENERAL**

#### **POWER OF LOCAL AUTHORITY TO MAKE ALLOWANCES TO CERTAIN PERSONS DISPLACED**

A local authority may pay

(a) To any person displaced from a house to which a Demolition Order, or a Closing Order applies, such reasonable allowance as they think fit towards his expenses in removing; and

(b) to any person carrying on any trade or business in any such house such reasonable allowance as they think fit towards the loss (i) he may sustain by reason of the disturbance of his trade or business; and (ii) involving personal hardship consequent upon the population of the locality being materially decreased.

In estimating that loss they shall have regard to

(i) the period for which the premises occupied by him might have been expected to be available for the purpose of his trade or business; and

(ii) the availability of other premises suitable for that purpose. (Sect. 18.)

#### **PROVISIONS FOR PROTECTION OF OWNERS OF HOUSES**

If an owner of any house, who is not the person in receipt of the rents and profits thereof, gives notice to the local authority of his interest in the house, the authority shall give to him notice of any proceedings taken by them in pursuance of this Part of this Act in relation to the house. (Sect. 19.)

### **POWER OF LOCAL AUTHORITY TO GRANT CHARGING ORDER TO OWNER ON COMPLETION OF WORKS**

(1) Where any owner has completed in respect of a house any works required to be executed by a notice of a local authority under this Part of this Act, he may apply to the local authority for a Charging Order.

(2) The local authority, when satisfied that the owner has duly executed the required works, shall make an Order accordingly charging on the house an annuity to repay the amount.

(3) The annuity charged shall be a sum of 6 per cent and shall commence from the date of the Order and be payable for a term of thirty years to the owner named in the Order, his executors, administrators or assigns. (Sect. 20.)

### **PROHIBITION OF BACK-TO-BACK HOUSES**

Back-to-back houses are prohibited notwithstanding anything in any local Act or by-law in force in any borough or district. (Sect. 22.)

### **APPLICATION OF CERTAIN PROVISIONS OF PART II TO TEMPORARY SHELTERS**

References to a house in Sect. 9 to 17 of this Act include a reference to a hut, tent, caravan, or other temporary or moveable form of shelter which is used for human habitation and has been in the same enclosure for a period of two years next before action is taken under those sections. (Sect. 23.)

### **LOCAL AUTHORITY FOR PART II IN LONDON (OTHER THAN THE CITY)**

As respects the administrative county of London, other than the City of London, the local authority for the purposes of this Part of this Act shall, subject to the provisions of Sect. 8 of this Act, be the Council of the Metropolitan Borough. (Sect. 24.)

## **PART III**

### **CLEARANCE AND RE-DEVELOPMENT CLEARANCE AREAS**

#### **POWER TO DECLARE AN AREA TO BE CLEARANCE AREA**

Where a local authority, upon consideration of an official representation or other information in their possession, are satisfied as respects any area in their district—

(a) that the dwelling-houses in that area are by reason of  
(i) disrepair or sanitary defects unfit for human habitation; or

(ii) by reason of their bad arrangement; or

(iii) the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area; and

(iv) that the other buildings, if any, in the area are for the like reason dangerous or injurious to the health of the inhabitants; and

(b) that the most satisfactory method of dealing with the conditions in the area is the demolition of all the buildings in the area;

the authority shall

(a) cause that area to be defined on a map in such manner as to exclude from the area any building which is not unfit for human habitation or dangerous or injurious to health; and

(b) pass a resolution declaring the area so defined to be a *Clearance Area*, that is to say, an area to be cleared of all buildings in accordance with the subsequent provisions of this Part of this Act.

Provided that, before passing any such resolution, the authority shall satisfy themselves—

(i) that in so far as suitable accommodation available for the persons of the working classes who will be displaced by the clearance of the area does not already exist,

(a) the authority can provide or

(b) secure the provision of,

such accommodation in advance of the displacements which will from time to time become necessary as the demolition of buildings in the area, or in different parts thereof, proceeds; and

(ii) that the resources of the authority are sufficient for the purpose of carrying the resolution into effect.

There is no statutory definition of a Clearance Area, but it is stated to be one in which *all* the buildings must be demolished.

In Committee on the 1930 Bill an amendment was agreed to, designed to make it quite clear that a Clearance Area may include buildings other than dwelling-houses. It was explained that the amendment was introduced on behalf of the London County Council.



The Minister of Health (The Right Hon. Arthur Greenwood) said a Clearance Area would not necessarily be a solid mass of buildings. It might have "islands" in it which would not constitute part of the clearance area. There might be public buildings, churches, and so on, which would form no part of the Clearance Area and obviously would remain. The intention was to make a Clearance Area one which consisted entirely of buildings, including houses that were either unfit for human habitation, or injurious to the public health, because of their bad arrangement, and entirely to clear that area.

A Clearance Area may now include or may be wholly composed of property belonging to a local authority. (Sect. 25.)

### DEFINITION OF HOUSES

The decision of *du Parc*, J., in this case has been affirmed by the Court of Appeal (Sir Wilfrid Greene, M.R., MacKinnon, and Goddard, L.J.J.). But whereas *du Parc*, J., treated the dwellings as "houses," and the garages as "other buildings," the Court of Appeal treated the whole premises as "houses" within Sect. 25 of the Housing Act, 1936. (*Butler, Camberwell (Wingfield Mews) No. 2 Clearance Order*, 1936, *Re* (1939), 1 All E.R. 590; 55 T.L.R. 429; 103 J.P. 150.)

There is no duty to provide accommodation in respect of shops or licensed premises (*Barn Close Clearance Order*, [1933] K.B.D.), but the London County Council under the provisions of the London County Council General Powers Act, 1921, possesses such power.

A local authority shall forthwith transmit to the Minister—

(a) A copy of any resolution passed by them under this section; together with

(b) a statement of the number of persons of the working classes who on a day specified in the statement were occupying the buildings comprised in the Clearance Area.

(3) So soon as may be after a local authority have declared any area to be a *Clearance Area* they shall, in accordance with the appropriate provisions hereinafter in the Act contained,

(i) proceed to secure the clearance of the area in one or other of the following ways, or

(ii) partly in one of those ways and partly in the other of them,

that is to say—

(a) by ordering the demolition of the buildings in the area, or

(b) by purchasing the land comprised in the area and themselves undertaking, or otherwise securing, the demolition of the buildings thereon. (Sect. 25.)

Where approval of a scheme is necessary to its validity, a conditional approval is not an approval. (*In re Edburton and Poynings Benefices*, [1934] A.C. 115 (J.C.); 150 L.T. 20.)

An affected owner is not entitled to be heard by a local authority before they pass a resolution declaring an area a clearance area. The Housing Act lays down the requisite procedure. The owner may make any objections to the Minister. (*Fredman v. Minister of Health*, 1936, 34 L.G.R. 153.)

A housing authority may modify the area of a clearance scheme before the draft order is sent to the Minister; and preliminary discussions with officials of the Ministry of Health do not render the order void; the Minister's functions become quasi-judicial only when he has received objections. (*Re Birkenhead, Cambridge Place, Clearance Order*, 1934, *ex parte Frost*, 1935, 33 L.G.R. 20; also reported as *Frost v. Minister of Health*, [1935] 1 K.B. 286; 51 T.L.R. 171; 152 L.T. 330.)

### CLEARANCE ORDERS

(1) Where as respects any area declared by them to be a Clearance Area a local authority determine to order any buildings in the area to be demolished, they shall make and submit to the Minister, for confirmation by him, an Order (in the Act referred to as a *Clearance Order*) ordering the demolition of each of those buildings.

(2) The provisions of the Third Schedule to the Act shall have effect with respect to the making, submission, and confirmation of a Clearance Order, and the provisions of the Second Schedule to this Act shall have effect with respect to the validity and date of operation of such an Order.

The Minister of Health as a quasi-judicial officer exercising his powers must do so in accordance with the rules of natural justice. That is to say, he must hear both sides and not one side in the absence of another. (*Errington v. Minister of Health*, [1935] 1 K.B. 249; 152 L.T. 154.)

The fact that a Ministry of Health official visits the site of a Clearance Order before objection is made to that Order does not avoid the Minister's subsequent confirmation. (*Offer v. Minister of Health*, 1935, 99 J.P. 347; 33 L.G.R. 369; [1936] 1 K.B. 40 (C.A.); 153 L.T. 270.)

(3) When a Clearance Order has become operative, the owner or owners of any building to which the Order applies shall demolish that building:—

(a) before the expiration of six weeks from the date on which the building is required by the order to be vacated; or

(b) if it is not vacated until after that date, before the expiration of six weeks from the date on which it vacated; or

(c) in either case, before the expiration of such longer period as in the circumstances the local authority may deem reasonable,

and if the building is not demolished before the expiration of that period, the local authority shall enter and demolish the building, and sell the materials thereof.

(4) Any expenses incurred by an authority under the last preceding paragraph, after giving credit for any amount realized by the sale of materials, may be recovered by them as a simple contract debt in the County Court within the jurisdiction of which the premises are situated—

(a) from the owner of the building; or

(b) if there is more than one owner, from the owners thereof in such shares as the judge may determine to be just and equitable; and

(c) any owner who pays to the authority the full amount of their claim may in like manner recover from any other owner such contribution, if any, as the judge may determine to be just and equitable.

Any surplus in the hands of the authority shall be paid by them—

(i) to the owner of the building, or

(ii) if there is more than one owner, as those owners may agree, or

(iii) in default of agreement, into the County Court in accordance with the provisions of Sect. 70 of the County Courts Act, 1888, incorporated in the County Court Act, 1934.

(5) Where a Clearance Order has become operative, no land to which the Order applies shall be used for building purposes, or otherwise developed, except subject to such restrictions and conditions, if any, as the local authority may think fit to impose.

(6) A person who commences, or causes to be commenced, any work in contravention of a restriction or condition imposed under the last foregoing subsection shall, on summary conviction, be liable to a fine.

(7) The provisions of Sect. 17 of this Act *ante*, relating to the cleansing of houses from vermin, shall have effect in relation to a house to which a Clearance Order applies.

(8) Any hut, tent, caravan or similar structure used as a permanent dwelling, if unfit for human habitation, may be included in a clearance area. (Sect. 26.)

The Minister, however, is bound to consider the condition of the area at the time of the public inquiry. If all the buildings in a Clearance Area have already been demolished there is nothing for the Order to operate upon and the Minister has no jurisdiction to confirm a Compulsory Purchase Order. (*Marriott v. Minister of Health*, [1937] 1 K.B. 128; 155 L.T. 94.) The effect is to limit seriously the powers of a local authority to deal with insanitary areas under such circumstances, as they cannot subsequently purchase surrounding land in order to carry out a complete scheme.

The Housing Act, 1936, empowers a housing authority to declare an area to be a Clearance Area if the houses and other buildings therein are dangerous or injurious to the health of the inhabitants. The Act further provides that other buildings properly included in the Clearance Area only by reason of their bad arrangement in relation to other buildings shall be excluded from the operation of the Order, but such exclusion shall not apply to any part of such buildings used as a dwelling, if, by reason of disrepair or sanitary defects such part is unfit for human habitation.

The Minister of Health confirmed a Clearance Order necessitating the demolition of premises known as the "Mews," a cul de sac, consisting of garages and workshops on the ground floor with dwelling places on the upper storey. The garages were separately occupied. The owner appealed against the Order on the ground that the premises were all "other buildings" and contained no "houses" and, even if an Order could be made, the premises were improperly included in the Order. The Judge decided that the upper floors were "houses" and the ground floor "other buildings" and accepted the Ministry's contention that the "other buildings" were, by reason of their bad arrangement, dangerous and injurious to health. The awkward point may have to be decided some day how, if the ground floor consists of insanitary houses and the upper floor of "other buildings" excluded from a Clearance Order, the former can be demolished and the latter preserved. (*In re Buller, Camberwell (Wingfield Mews) No. 2 Clearance Order*, 1936, [1938] 2 All E.R. 279.)

326 LOCAL GOVERNMENT OF THE UNITED KINGDOM  
**PURCHASE BY LOCAL AUTHORITY OF LAND SURROUNDED  
BY OR ADJOINING CLEARANCE AREA**

Where a local authority determine to purchase land comprised in a Clearance Area, they may purchase also—

(1) any land which is surrounded by the Clearance Area, and the acquisition of which is reasonably necessary for the purpose of securing a cleared area of convenient shape and dimensions; and

(2) any adjoining land the acquisition of which is reasonably necessary for the satisfactory development or user of the cleared area.

In such cases there is a difference in the amount of compensation payable. (Sect. 27.)

**PROVISIONS WITH RESPECT TO PROPERTY BELONGING  
TO A LOCAL AUTHORITY WITHIN, SURROUNDED  
BY, OR ADJOINING A CLEARANCE AREA**

A local authority may include in a Clearance Area—

(1) any land belonging to them which they might have included in any such area if it had not belonged to them;

(2) any land which they have previously acquired with the intention of demolishing the buildings thereon. (Sect. 28.)

**PURCHASE OF LAND IN A CLEARANCE AREA**

(1) Where a local authority have determined to purchase under this Part of this Act land in accordance with the previous section, they may purchase the land by agreement or compulsorily in accordance with the provisions of the First Schedule to the Act.

(2) An Order authorizing the compulsory purchase of land

(a) comprised in a Clearance Order shall be submitted to the Minister within six months; and

(b) surrounded by or adjoining a Clearance Area shall be submitted to the Minister within twelve months,

after the date of the resolution declaring the area to be a Clearance Area, or within such longer period as the Minister may in the circumstances of the particular case, allow.

(3) The provisions of the Second Schedule to this Act shall have effect with respect to the validity and date of operation of a Compulsory Purchase Order made under this section. (Sect. 29.)

**TREATMENT OF CLEARANCE AREA**

(1) A local authority who have under this Part of this Act

purchased any land comprised in, or surrounded by, or adjoining a Clearance Area shall, as soon as may be—

- (i) cause every building thereon to be vacated; and
- (ii) subject to compliance with any provision contained in a Compulsory Purchase Order with respect to the carrying out of re-housing operations;
- (iii) deal with that land in one or other of the following ways, or partly in one of these ways and partly in the other of them, that is to say—

(a) They shall demolish every building thereon

- (i) before the expiration of six weeks from the date on which it is vacated, or
- (ii) before the expiration of such longer period as in the circumstances they deem reasonable; and
- (iii) thereafter may sell or let the land subject to such restrictions and conditions, if any, as they may think fit; or
- (iv) may, subject to the approval of the Minister and subject to the like restrictions as are contained in Sect. 163 of the Local Government Act, 1933, with respect to the appropriation of land by local authorities under that section, appropriate the land for any purpose for which they are authorized to acquire land; or

(b) They shall, so soon as may be, sell or let the land, subject to a condition that the buildings thereon shall be demolished forthwith, and subject to such restrictions and other conditions, if any, as they think fit.

(2) Land sold, exchanged or leased under this section shall be sold, exchanged, or leased at the best price or for the best rent that can reasonably be obtained having regard to any restriction or condition imposed.

(3) For the purposes of this section, "sale" includes sale in consideration of a chief rent, rent charge, or other similar periodical payment, and "sell" has a corresponding meaning. (Sect. 30.)

#### ARRANGEMENTS WHERE ACQUISITION OF LAND IN CLEARANCE AREA FOUND TO BE UNNECESSARY

(1) Where a local authority have submitted to the Minister an Order for the Compulsory Purchase of land in a clearance area, and

(2) the Minister is satisfied that the owner of the land, with the concurrence of any mortgagee thereof, agrees to the demolition of the building thereon, and that the authority can secure

the proper clearance of the area without acquiring the land the Minister may—

(a) in a case where the order has not been confirmed—

(i) authorize the authority to submit forthwith and without any previous publication or service a Clearance Order with respect to the buildings; and

(ii) upon their so doing may modify the Compulsory Purchase Order by excluding the land therefrom; and

(iii) confirm the Clearance Order without causing an inquiry to be held; or

(b) in a case where the Compulsory Purchase Order has been confirmed but the land has not become vested in the authority,

(i) authorize them to discontinue proceedings for the purchase of the land on their being satisfied that such covenants as may be requisite for securing that the buildings shall be demolished in like manner; and

(ii) the land become subject to the like restrictions and conditions, as if the authority had dealt with the land in accordance with the provisions of the last foregoing section. (Sect. 31.)

#### POWER OF LOCAL AUTHORITY TO PURCHASE CLEARED LAND WHICH OWNERS HAVE FAILED TO RE-DEVELOP

The Act gives local authorities a general power of disposing of land in a cleared area. An area might be cleared either by requiring the owners to demolish the buildings themselves, or by the local authority purchasing the area and then arranging for demolition. (See Housing Act, 1936, Sect. 32.)

The method of requiring the owners to demolish is new, and is designed to enable local authorities, where they wish to secure the removal of a bad slum without being obliged to incur the enormously heavy capital expenditure of purchase and clearance. If a local authority wished to proceed by this method it would make a *Clearance Order*, which must be confirmed by the Minister. If objection be taken there must be a public inquiry.

After the Order has become operative, if the owner fails to demolish the buildings the local authority are empowered to enter and demolish and recover the cost. The cleared site would then remain with the owner, who could do what he liked with it, subject to the local by-laws and any town planning scheme which might be in force.

(1) Where land has been cleared of buildings in accordance with a *Clearance Order* made under this Part of this Act the local authority may—

(a) at any time after the expiration of eighteen months from the date on which the *Clearance Order* became operative,

(b) by resolution determine to purchase any part of that land which at the date of the passing of their resolution has not been, or is not in process of being,

(i) used for building purposes, or

(ii) otherwise developed by the owner thereof in accordance with plans approved by the authority and any restrictions or conditions imposed under Sub-sect. (5) of Sect. 26 of this Act.

(2) Where they are unable to buy by agreement they may make a *Compulsory Purchase Order*, of which due notice must be given, and which must be confirmed by the Minister in accordance with the provisions of the First Schedule to this Act.

Sunderland Corporation made a *Compulsory Purchase Order* in respect of a farm required for housing and park extension. While the Order was awaiting confirmation by the Minister, the Corporation sent a deputation to him to discuss housing and slum clearance matters, not in respect of the unconfirmed Order. The Divisional Court quashed the subsequent confirming of the Order, holding that the reception of the deputation was inconsistent with the Minister's quasi-judicial functions. The Court of Appeal reversed this decision, however, and held that it was not improper for him to receive the deputation. He was carrying out his requisite duties under the Act. (*Horn v. Minister of Health*, [1937] 1 K.B. 164; [1936] 2 All E.R. 1299; 155 L.T. 335.)

(3) An order authorizing the compulsory purchase of land for the purposes of this section shall be submitted to the Minister within three months after the date of the passing of the resolution.

(4) The provisions of the Second Schedule to this Act shall have effect with respect to the validity and date of operation, of a compulsory purchase order made under this section.

(5) A local authority shall deal with any land purchased by them under this section by sale, letting, or appropriation in accordance with the provisions of Section 30 of this Act. (Sect. 32.)

When the local authority purchase the land, they must proceed to demolish the buildings, and either appropriate the land for



some purpose for which they have statutory powers or dispose of it in some other way. An area must not be allowed to relapse again into its old condition, and, therefore, it is provided that where areas are dealt with in this way, local authorities shall make by-laws to prevent a relapse.

### LOCAL AUTHORITY FOR CLEARANCE AREAS IN LONDON

(a) *Within the City of London*: the Common Council, provided that in an improvement area by-laws for securing

- (i) the stability of buildings, or
- (ii) the prevention of or safety from fire

shall be made and enforced by the London County Council.

(b) *Outside the City of London*: the London County Council is the authority

- (i) to declare an area to be an improvement area;
- (ii) to determine what steps shall be taken for the improvement of that area;
- (iii) to purchase any land which they deem it expedient to acquire for the opening out of the area;
- (iv) to carry out such demolition of buildings and such street works on that land as they deem necessary;
- (v) to make any by-laws with respect to the area; and
- (vi) to enforce such of those by-laws as are by-laws for securing the stability of buildings or the prevention of or safety from fire; but

(c) *The Council of the Metropolitan Borough* in which the area is situated, on being informed by the county council as to the steps which the county council have determined to be necessary for the improvement of the area—

- (i) shall, subject as aforesaid, take those steps; and
  - (ii) shall thereafter serve and enforce any necessary notices requiring
    - (a) the execution of works on dwelling-houses in the area,
- or
- (b) the demolition of dwelling-houses, or
  - (c) the closing of parts of buildings therein, and
  - (iii) shall observe and enforce compliance with any by-laws made by the County Council with respect to the area, not being by-laws for securing the stability of buildings or the prevention of or safety from fire.

The Minister may by Order transfer the powers and duties of a defaulting Metropolitan Borough Council to the London County Council. (Act, 1936, Sect. 175.)

Within a metropolitan borough both the London County Council and the council of the borough shall be local authorities for the purposes of the provisions of this Part of this Act relating to Clearance Areas. (Sect. 33.)

### RE-DEVELOPMENT AREAS

The essential provisions as to Improvement Areas in the Housing Act, 1930, were repealed by the Housing Act, 1935, though they will continue to apply to schemes which are already in force, and some of the ancillary provisions will apply to the re-development schemes contemplated by the Act.

There will be Re-development Areas in urban areas, which are defined as the City of London, the rest of the administrative county of London, a county borough, a non-county borough, or an urban district.

### DUTY OF LOCAL AUTHORITY TO SECURE RE-DEVELOPMENT

(1) If the local authority are satisfied as a result of an inspection carried out under Sect. 57 of this Act, or otherwise that their district comprises any area in which the following conditions exist, viz.:

(a) that the area contains fifty or more working class houses;

(b) that at least one-third of the working class houses in the area are:

(i) overcrowded; or

(ii) unfit for human habitation; and not capable at a reasonable expense of being rendered so fit; or

(iii) so arranged as to be congested;

(c) that the industrial and social conditions of their district are such that the area should be used to a substantial extent for housing the working classes; and

(d) that it is expedient in connection with the provision of housing accommodation for the working classes that the area should be re-developed as a whole;

it shall be the duty of the local authority to cause the area to be defined on a map, and to pass a resolution declaring the area so defined to be a proposed re-development area.

(2) (a) As soon as may be after a local authority have passed a resolution a copy of the resolution and of the map must be sent to the Minister;

(b) The resolution must be published in one or more local newspapers circulating in the district together with a notice

stating that the resolution has been passed, and naming a place within their district where a copy of the resolution and the map may be inspected. (Sect. 34.)

### RE-DEVELOPMENT PLAN

(1) (a) within six months after a local authority have passed a resolution under the last foregoing section; or

(b) within such extended period as the Minister may allow, the authority shall prepare and submit to the Minister a Re-development Plan indicating—

(i) the land intended to be used for the provision of houses for the working class, for streets, for open spaces; and

(ii) generally the manner in which it is proposed that the defined area should be laid out.

(2) In the preparation of the plan the local authority shall have regard to the provisions of any planning scheme relating to the defined area or land in the neighbourhood thereof.

(3) Before submitting the plan to the Minister the local authority shall—

(a) publish in one or more local newspapers circulating in their district a notice

(i) stating that the plan has been prepared and is about to be submitted to the Minister;

(ii) naming a place within their district where the plan may be inspected; and

(iii) specifying that time within which, and the manner in which, objections to the re-development indicated by the plan can be made; and

(b) serve a notice to the like effect on

(i) every owner, lessee and occupier (except tenants for a month or any period or any period less than a month) of land in the defined area; and

(ii) every local authority, company, body or persons owning main pipes, electric lines or apparatus situate in that area.

(4) (a) If no objections are made, the Minister may approve the plan with or without modifications.

(b) If objections are made the Minister must cause a public local inquiry to be held.

(5) Advertisement and notification of the plan as approved will then become necessary.

(6) Modifications in the plan may be made in the same way as a new plan.

(7) The provisions of the Second Schedule to this Act shall

have effect with respect to the validity and date of operation of the Minister's approval of a re-development plan or a new plan.

(8) In the following provisions references shall be construed as references to the plan approved under this section. (Sect. 35.)

### **PURCHASE OF LAND FOR THE PURPOSES OF RE-DEVELOPMENT**

(1) Powers for the acquisition of land by the local authority by means of an order confirmed by the Minister in accordance with the First Schedule to this Act.

(2) After a specified period the local authority must acquire all land in respect of which they have not been able to make arrangements with other persons for the carrying out of the re-development plan. (Sect. 36.)

### **LOCAL AUTHORITY FOR RE-DEVELOPMENT AREAS IN LONDON (OTHER THAN THE CITY)**

As respects the administrative county of London, other than the City of London, the London County Council shall be the local authority for the purposes of the provisions of this Part of this Act relating to re-development areas, subject to the provisos of Sect. 37.

### **IMPROVEMENT AREAS**

*Note.* The provision of the Act of 1930 which deals with Improvement Areas is replaced by the procedure for Re-development Areas. It is incorporated in Sections 38 and 39 of the 1936 Act in consequence of the provisions being then applicable to Improvement Areas already declared or to Re-development Areas under the Housing Act, 1935, by reference.

Sect. 7 of the Act of 1930 provided that where a local authority are satisfied that the housing conditions in any area are dangerous or injurious to the health of the inhabitants, by reason of the disrepair or sanitary defects of the dwelling-houses therein and also by reason either of overcrowding or of the bad arrangement of the houses or of the narrowness or bad arrangement of the streets, and that these conditions can be effectively remedied *without* the demolition of all the buildings in the area, they may pass a resolution declaring the area to be an *Improvement Area*, with a view to the demolition or repair of such dwelling-houses as are unfit for human habitation, the purchase of land for opening out the area, and the abatement of overcrowding.

An Improvement Area may be described as a potential Clearance Area in which it is not necessary to demolish *all* the

properties, but which must be prevented by the local authority from lapsing into such a condition that all the properties must be demolished.

Such an area is that which it has been considered could be dealt with best by means of re-conditioning.

The Report of the Special Committee appointed by the National Housing and Town Planning Council confines the term "re-conditioning" to—

(a) *Houses* where considerable structural alterations are effected;

(b) those *slum areas* where by means of the pulling down of obstructive buildings, and substantial alterations to others, the whole area is substantially improved although it is not cleared.

#### Treatment of Improvement Area.

(1) A local authority which has passed a resolution under Sect. 7 of the Housing Act, 1930, declaring an area to be an Improvement Area, shall, as soon as may be—

(a) in the case of houses which are unfit for human habitation, serve notices under Part II of the Act of 1936 requiring—

(i) the execution of all necessary works thereon; or

(ii) the demolition thereof, and

enforce compliance with those notices; and

(b) in so far as the improvement of the area involves the *purchase of land* for opening out the area—

(i) proceed to purchase that land, unless

(ii) the authority are satisfied that the opening out of the area will be adequately carried out by the owner or owners of the land.

(2) Where the local authority have determined to purchase land under this Section, they may purchase that land by agreement, or by means of a Compulsory Purchase Order in accordance with the provisions of the First Schedule to this Act. (Sect. 38.)

#### LOCAL AUTHORITY FOR IMPROVEMENT AREAS IN LONDON (OTHER THAN THE CITY)

(1) As respects the administrative county of London other than the City of London, the London County Council shall be the authority—

(a) to determine what steps shall be taken for the improvement of an improvement area;

(b) to purchase any land which they deem it expedient to acquire for opening out the area; and

- (c) to carry out such demolition of buildings; and
- (d) to carry out such streets works on that land as they deem necessary.

The Council of the metropolitan borough in which the area is situate shall serve and enforce any necessary notices. Provided that if the borough council have made default the Minister may by order transfer their powers and duties to the London County Council. (Sect. 39.)

## GENERAL PROVISIONS AS TO CLEARANCE RE-DEVELOPMENT AND IMPROVEMENT

### COMPENSATION IN RESPECT OF LAND PURCHASED COMPULSORILY UNDER PART III

As the law stands, when a house is condemned, it is worth nothing. The site is worth something in almost all cases, and the landlord is entitled to that. It seems right to keep to the broad principle of site values.

(1) Where land is purchased compulsorily by a local authority under this Part of this Act the compensation shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to the following provisions of this section.

(2) The compensation to be paid for land, including any buildings thereon, purchased as being land comprised in a Clearance Area, shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building by-laws for the time being in force in the district.

A Divisional Court of the High Court of Justice, decided in November, 1931, in the case of *Vauxhall Estates, Ltd. v. Corporation of Liverpool* (1931) 95 J.P. 224; W.N. 259; 48 T.L.R. 100; 1932, 1 K.B. 783, that where land was acquired for an improvement scheme under the Housing Act, 1925, the compensation payable was to be in accordance with Sect. 46 of that Act, and, so far as that section is inconsistent with Sect. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, the later section prevails. (*Ellen Street Estates v. Minister of Health*, [1934] 1 K.B. 590; 98 J.P. 157.)

(3) In the case of a house which the local authority are authorized to purchase under Sect. 36 of this Act (Re-development) the compensation shall be assessed in like manner as if it had been land purchased as being comprised in a Clearance Area.

(4) In the case of land other than land in respect of which the provisions of subsection (2) or (3) of this Section have effect (i.e. otherwise than compulsory purchase in respect of Clearance, Re-development and Improvement Schemes) the rules specified in the Fourth Schedule to this Act shall be observed. (Sect. 40.)

**INTEREST ON COMPENSATION AWARD.** In *All Souls College Oxford v. Middlesex County Council* the county council acquired land from the College under a Compulsory Purchase Order. It was agreed that notice to treat was deemed to have been served by a particular date. The compensation for compulsory purchase fell to be determined under the Acquisition of Land (Assessment of Compensation) Act, 1919. The College claimed that the arbitrator had power to award interest on the amount of compensation from the date of the notice to treat or the award of the arbitrator under Sect. 11 of the Arbitration Act, 1934. Sect. 11 of the Arbitration Act, 1934, provides that a sum payable under an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt. The Court held that the Arbitration Act, 1934, did not apply to the present arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919, and the question of interest did not arise. Prior to the hearing of this case that of *Collins v. Feltham U.D.C.*, [1937] 4 All E.R. 189; 36 L.G.R. 34) had decided that under the latter Act compensation could be paid in respect of the ordinary market value of the land only if sold in the open market.

#### **OBIGATION OF LOCAL AUTHORITY AND OF THE MINISTER TO STATE REASONS FOR DECIDING THAT A BUILDING IS UNFIT**

(1) The Minister shall not cause the Public Local Inquiry to be held earlier than the expiration of fourteen days after it has been shown to his satisfaction that the local authority have served upon the objector a notice in writing stating the principal grounds for being satisfied that the building is unfit for human habitation.

(2) If the building is included in the Order as confirmed as being unfit for human habitation, any interested person is entitled, on making a request in writing, to be furnished by the Minister with a statement in writing of his reasons for deciding that the building is so unfit. (Sect. 41.)

#### **PAYMENTS IN RESPECT OF WELL-MAINTAINED HOUSES**

(1) Where as respects a house

(a) which is made the subject of a compulsory purchase

order under this Part of this Act as being unfit for human habitation; or

(b) which is made the subject of a clearance order (being, in either case, an order made on or after the twentieth day of December, nineteen hundred and thirty-four) the Minister is satisfied after causing the house to be inspected by an officer of the Ministry that, notwithstanding its sanitary defects, it has been well maintained, the Minister may give directions for the making by the local authority of a payment under this section in respect of the house.

(2) A payment under this section shall be of an amount equal either—

(a) to the amount by which the aggregate expenditure which is to be shown to the satisfaction of the local authority to have been incurred in maintaining the house during the five years immediately before the date on which the order was made exceeds an amount equal to one and one-quarter times the rateable value of the house; or

(b) to one and a half times the rateable value of the house; whichever is the greater.

(3) A payment under this section shall be made—

(a) if the house is occupied by an owner thereof, to him; or

(b) if the house is not so occupied, to the person or persons liable under any enactment, covenant or agreement to maintain and repair the house; and if more than one person is so liable, in such shares as the authority think equitable in the circumstances:

Provided that if any other person satisfies the local authority that the good maintenance of the house is attributable to a material extent to work carried out by him or at his expense, the local authority may, if it appears to them to be equitable in the circumstances, make the payment, in whole or in part, to him.

(4) In this section the expression "rateable value" means in relation to a house the value which in the valuation list in force at the date on which the order is made is shown at that date as the rateable value of the house; or, where the net annual value differs from the rateable value, as the net annual value. (Sect. 42.)

#### PROVISIONS AS TO COSTS OF PERSONS OPPOSING ORDERS AND AS TO COSTS OF MINISTER

The Minister may make such order as he thinks fit in favour of any owner of any lands included in a Clearance Order, or in a



Compulsory Purchase Order made under this Part of this Act, or in a Re-development Plan, or a new plan, for the allowance of reasonable expenses properly incurred by the owner in opposing the order or the approval of the plan. (Sect. 43.)

#### **POWER OF LOCAL AUTHORITY TO MAKE ALLOWANCES TO CERTAIN PERSONS DISPLACED**

A local authority may pay

(a) To any person displaced from any house or other building—

(i) to which a Clearance Order applies, or

(ii) which has been purchased by them under this Part of this Act relating to Clearance Areas or to Improvement Areas or as being unfit for human habitation and not capable of being rendered so fit,

such reasonable allowance as they think fit towards his expenses of removing; and

(b) to any person carrying on a trade or business, such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent on his having to quit the house or building. (Sect. 44.)

#### **OBLIGATIONS OF LOCAL AUTHORITY WITH RESPECT TO RE-HOUSING**

(1) A local authority who have passed a resolution declaring any area to be a clearance area or an improvement area, shall, before taking any action under that resolution which will necessitate the displacement of any persons of the working classes, undertake to carry out, or to secure the carrying out of such re-housing operations as the Minister may consider to be reasonably necessary.

(2) In so far as suitable accommodation is not available for persons who are displaced from working-class houses in the carrying out of Re-development in accordance with a Re-development Plan, it shall be the duty of the local authority to provide, or to secure the provision of, such accommodation in advance of the displacements from time to time becoming necessary as the re-development proceeds. (Sect. 45.)

#### **EXTINGUISHMENT OF WAYS, EASEMENTS, ETC., OVER LAND PURCHASED UNDER PART III**

(1) A local authority may, with the approval of the Minister, by order extinguish any public right of way over any land purchased by them under this Part of this Act.

(2) Where a local authority have resolved to purchase land under this Part of this Act over which a public right of way exists, it shall be lawful for the authority to make and the Minister to approve, in advance of the purchase, an order extinguishing that right as from the date on which the buildings on the land are vacated, or at the expiration of such period after that date as may be specified in the Order.

(3) Any person who suffers loss by the extinguishment of any such right shall be entitled to be paid by the local authority compensation to be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919. (Sect. 46.)

## RE-DEVELOPMENT AND RE-CONDITIONING BY OWNERS

### RE-DEVELOPMENT BY OWNERS

(1) Any persons proposing to undertake the re-development of land may submit particulars of their proposals to the local authority; who

(a) shall consider the proposals and

(b) if they appear to the authority to be satisfactory shall give to the persons by whom they were submitted notice to that effect, specifying times within which the several parts of the re-development are to be carried out; and if and so long as the re-development is being proceeded with

(i) in accordance with the proposals and within the specified time limits,

(ii) subject to any variation of extension approved by the authority,

no action shall be taken in relation to the land under any of the powers conferred by Part II or Part III of this Act.

(2) Where the local authority are satisfied that for the purpose of enabling re-development to be carried out in accordance with proposals

(a) which have been submitted as aforesaid, and

(b) in respect of which the authority have given notice of their satisfaction,

it is necessary that

(i) any dwelling-house to which the Rent and Mortgage Interest Restrictions Acts, 1920 and 1933, apply, should be demolished, and

(ii) that suitable alternative accommodation within the

meaning of section eleven of this Act is available for the tenant, or will be available for him at a future date,

that authority may issue to the landlord a certificate that such suitable alternative accommodation is available for the tenant or will be available for him by that future date, and a certificate so issued shall, for the purposes of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, have the like effect as if it had been such a certificate as is mentioned in sub-section (2) of section three of that Act with respect to accommodation to be provided forthwith or on that future date, as the case may be. (Sect. 50.)

### CERTIFICATES AS TO THE CONDITION OF HOUSES

(1) Any owner of a dwelling-house

(a) which is occupied, or

(b) of a type suitable for accommodation, by persons of the working classes; and

(c) in respect of which works of improvement (otherwise than by way of decoration or repair) or structural alteration are proposed to be executed,

may submit a list of the proposed works to the local authority with a request in writing that the authority shall inform him whether in their opinion the house would

(i) after the execution of those works, or

(ii) of those works together with any additional works,

be in all respects fit for human habitation and would, with reasonable care and maintenance, remain so fit for a period of at least five years.

(2) As soon as may be after receipt of such a list and request as aforesaid the local authority shall

(a) take the list into consideration, and

(b) inform the owner whether they are of opinion as aforesaid or not, and

(c) in a case where they are of that opinion, shall furnish him with a list of the additional works (if any) appearing to them to be required.

(3) Where the local authority have stated that they are of opinion as aforesaid, and the works specified in the list submitted to them, together with any additional works specified in a list furnished by them, have been executed to their satisfaction, they shall

(a) on the application of any owner of the house; and

(b) upon payment by him of a fee of one shilling

issue to him a certificate that the house

(i) is in all respects fit for human habitation ; and

(ii) will with reasonable care and maintenance remain so fit for a period (being a period of not less than five nor more than ten years) to be specified in the certificate.

(4) During the period specified in a certificate under this section no action shall be taken under this Part of this Act with a view to the demolition of the house.

(5) In this section the expression "improvement" includes the provision of additional or improved fixtures or fittings. (Sect. 51.)

#### **LOCAL AUTHORITY FOR RE-DEVELOPMENT, ETC., BY OWNERS IN LONDON (OTHER THAN THE CITY)**

As respects the administrative county of London, other than the City of London, the metropolitan borough council shall be the local authority for the purposes of the above. (Sect. 53.)

#### **DEMOLITION OF OBSTRUCTIVE BUILDINGS**

##### **POWER OF LOCAL AUTHORITY TO ORDER DEMOLITION OF OBSTRUCTIVE BUILDING**

(1) The local authority may serve upon the owner or owners of a building which appears to the authority to be an obstructive building notice of the time (being some time not less than twenty-one days after the service of the notice) and place at which the question of ordering the building to be demolished will be considered by the authority ; and the owner or owners shall be entitled to be heard when the matter is so taken into consideration.

(2) If, after so taking the matter into consideration, the authority are satisfied that the building is an obstructive building and that the building or any part thereof ought to be demolished,

(a) they may make a Demolition Order requiring that

(i) the building or that part thereof shall be demolished, and

(ii) the building, or such part thereof as is required to be vacated for the purposes of the demolition, shall be vacated within two months from the date on which the order becomes operative, and

(b) if they do so, they shall serve a copy of the order upon the owner or owners of the building.

(3) The expression "obstructive building" means a building

which, by reason only of its contact with, or proximity to, other buildings, is dangerous or injurious to health.

(4) This section shall not apply to a building which is the property of statutory undertakers, unless it is used for the purposes of a dwelling, showroom, or office or which is the property of a local authority. (Sect. 54.)

### EFFECT OF ORDER FOR DEMOLITION OF OBSTRUCTIVE BUILDING

(1) If,

(a) before the expiration of the period within which a building in respect of which an order is made under the last foregoing section is thereby required to be vacated,

(b) any owner or owners, whose estate or interest, or whose combined estates or interests, in the building and the site thereof is or are such that the acquisition thereof by the local authority would enable the local authority to carry out the demolition provided for by the order,

(c) make to the local authority an offer for the sale of that interest, or of those interests, to the local authority,

(d) at a price to be assessed, as if it were compensation for a compulsory purchase, by arbitration in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to the rules specified in the Fourth Schedule to this Act,

(e) the authority shall accept the offer and

(f) shall as soon as possible after obtaining possession carry out the demolition.

(2) If no such offer as is mentioned in the last foregoing subsection is made before the expiration of the said period, the owner or owners of the building shall carry out the demolition provided for by the order

(a) before the expiration of six weeks from the last day of that period; or,

(b) if the building, or such part thereof as is required to be vacated, is not vacated until after that day, before the expiration of six weeks from the day on which it is vacated, or,

(c) in either case, before the expiration of such longer period as in the circumstances the local authority deem reasonable; and

if the demolition is not so carried out the local authority shall enter and carry out the demolition and sell the materials rendered available thereby. (Sect. 55.)

(*London County Council v. Harling Street Owners*, [1935] 2 K.B. 322; 152 L.T. 594.)

## PART IV

## ABATEMENT OF OVERCROWDING

DUTY OF LOCAL AUTHORITY TO INSPECT AND MAKE  
REPORTS AND PROPOSALS AS TO OVERCROWDING

The "local authorities" for the purposes of this Part of the Act are—

- (a) as respects the City of London: the Common Council;
- (b) as respects any other part of the administrative county of London: the metropolitan borough council, except as to proposals in respect of new houses, when it is the London County Council. The London County Council may act in default of a metropolitan borough. (Sect. 69.)
- (c) Elsewhere, the council of the borough, urban district or rural district. (Sect. 1 (1).)

(1) It shall be the duty of every local authority before such dates as may be fixed by the Minister as respects their district, to cause an inspection thereof to be made with a view to ascertaining what dwelling-houses therein are overcrowded, and to prepare and submit to the Minister a report showing the result of the inspection and the number of new houses required in order to abate overcrowding in their district, and, unless they are satisfied that the required number of new houses will be otherwise provided, to prepare and submit to the Minister proposals for the provision thereof.

(2) It shall be the duty of the local authority to cause a further inspection, report, and proposals, as aforesaid if—

- (a) it appears to them that occasion has arisen therefor; or
- (b) the Minister so directs.

In the latter case, the Minister may, after consultation with the local authority, fix dates before which the performance of the said duties is to be completed. (Sect. 57.)

## DEFINITION OF OVERCROWDING

"Overcrowding" is defined in Sect. 58 and the Fifth Schedule to the Act by reference to either the number of persons sleeping in the same room or the number of persons in relation to the number and floor area of the rooms.

(1) A dwelling-house shall be deemed for the purposes of this Act to be overcrowded at any time when the number of persons sleeping in the house either—

- (a) is such that any two of those persons, being persons ten years old or more of opposite sexes and not being persons

living together as husband and wife, must sleep in the same room; or

(b) is, in relation to the number and floor area of the rooms in which the house consists, in excess of the permitted number of persons as defined in the Fifth Schedule to this Act.

(2) In determining for the purposes of this section the number of persons sleeping in a house, no account shall be taken of a child under one year old, and a child who has attained one year and is under ten years old shall be reckoned as one-half of a unit.

#### FIFTH SCHEDULE.

#### NUMBER OF PERSONS PERMITTED TO USE A HOUSE FOR SLEEPING

For the purposes of Part IV of this Act the expression "the permitted number of persons" means, in relation to any dwelling-house, either—

(a) the number specified in the second column of Table I in the annex hereto in relation to a house consisting of the number of rooms of which that house consists, or

(b) the aggregate for all the rooms in the house obtained by reckoning, for each room therein of the floor area specified in the first column of Table II in the annex hereto, the number specified in the second column of that Table in relation to that area,

whichever is the less.

Provided that in computing for the purposes of the said Table I the number of rooms in a house, no regard shall be had to any room having a floor area of less than 50 sq. ft.

#### ANNEX

TABLE I

Where a house consists of—

(a) One room . . . . .	2
(b) Two rooms . . . . .	3
(c) Three rooms . . . . .	5
(d) Four rooms . . . . .	7½
(e) Five rooms or more . . . . .	10

with an additional 2 in respect of each room in excess of five.

TABLE II

Where the floor area of a room is—

(a) 110 sq. ft. or more . . . . .	2
(b) 90 sq. ft. or more, but less than 110 sq. ft. . . . .	1½
(c) 70 sq. ft. or more, but less than 90 sq. ft. . . . .	1
(d) 50 sq. ft. or more, but less than 70 sq. ft. . . . .	½
(e) Under 50 sq. ft. . . . .	Nil

## OFFENCES IN RELATION TO OVERCROWDING

(1) If after "the appointed day" the occupier or landlord causes or permits a house to be overcrowded, he shall be guilty of an offence.

(2) No offence is committed under this Section by the occupier after the appointed day unless—

(a) suitable alternative accommodation is offered to the occupier after the appointed day and he fails to accept it, or

(b) suitable alternative accommodation is so offered to some person living in the house who is not a member of the occupier's family and whose removal is reasonably practicable in all the circumstances, and the occupier fails to require his removal.

"The appointed day" will be determined by the Minister, and he may fix different appointed days for different localities. The Act does not say so, but clearly the intention is that an "appointed day" shall not be fixed unless there is ample accommodation available, so that overcrowding is due to choice and not to necessity.

(3) Where after the appointed day a dwelling-house, which would not otherwise be overcrowded, becomes overcrowded by reason of a child attaining one of the ages referred to in the last foregoing section, then—

(a) if the occupier applies to the local authority for suitable alternative accommodation; or

(b) has so applied before the date when the child attains that age,

he shall not be guilty of an offence under this section in respect of the overcrowding of the house after the date of his application;

(i) so long as all the persons sleeping in the house are persons who were living there on the date when the child attained that age and thereafter continuously live there; or

(ii) children born after that date of any of those persons, unless—

(a) suitable alternative accommodation is offered to the occupier,

(i) on or after the date when the child attains that age; or

(ii) if he has applied before that date, is offered at any time after the application and he fails to accept it; or

(b) the removal from the house of some person not a member of the occupier's family is, on that date or thereafter



becomes, reasonably practicable having regard to all the circumstances (including the availability of suitable alternative accommodation for that person) and the occupier fails to require his removal.

(4) Where the persons sleeping in an overcrowded house include a member of the occupier's family who does not live there, but is sleeping there temporarily, the occupier shall not be guilty of an offence under this section unless the circumstances are such that he would be so guilty if that member of his family were not sleeping in the house.

(5) The landlord of an overcrowded house shall be deemed to cause or permit it to be overcrowded—

(a) if, after receiving notice in writing from the local authority, that it is overcrowded in such circumstances as to render the occupier thereof guilty of an offence, the landlord fails to take such steps as it is reasonably open to him to take for securing the abatement of the overcrowding, including if necessary legal proceedings for possession of the house; or

(b) if, when letting the house after the appointed day, he had reasonable cause to believe that it would become overcrowded, in such circumstances as to render the proposed occupier thereof guilty of an offence, or failed to take such steps, as it was reasonably open to him to take, for satisfying himself that it would not become so overcrowded, including the making of inquiries of the proposed occupier as to the number of persons who would be allowed to sleep in the house; and not otherwise. (Sect. 59.)

The Minister has issued an Order (S.R. and O., 1936, No. 1560) fixing (for the areas specified) the 1st January, 1937, as the appointed day for making overcrowding an offence and the 1st July, 1937, for entry in rent books of the provisions of the Act relating to overcrowding.

#### POWER OF LOCAL AUTHORITY TO AUTHORIZE THE TEMPORARY USE OF A HOUSE BY PERSONS IN EXCESS OF THE PERMITTED NUMBER

The local authority may grant a licence to the occupier or intended occupier to permit an excess of persons in a house, either unconditionally or subject to any conditions specified therein. (Sect. 61.)

### ENTRIES IN RENT BOOKS, INFORMATION AND CERTIFICATES WITH RESPECT TO THE PERMITTED NUMBER

Statements as to the permitted number of persons are to be included in the rent book, and the local authority must, on the application of the landlord or occupier, ascertain how many persons are permitted. (Sect. 62.)

### INFORMATION AS TO RIGHTS AND DUTIES AS RESPECTS OVERCROWDING

The local authority shall have power to publish information for the assistance of landlords and occupiers of dwelling-houses as to their rights and duties under the provisions of this Part of this Act relating to overcrowding and as to the enforcement thereof. (Sect. 63.)

### DUTY OF LANDLORD TO INFORM LOCAL AUTHORITY OF OVERCROWDING

The landlord or his agent has the duty of informing the local authority, within seven days after the fact first comes to his knowledge, that his house is overcrowded. (Sect. 64.)

### RIGHT OF LANDLORD TO OBTAIN POSSESSION OF OVERCROWDED HOUSE

The landlord is empowered to obtain possession of an overcrowded house, notwithstanding the provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933. (Sect. 65.)

### ENFORCEMENT OF FOREGOING PROVISIONS

No prosecution may be instituted for any of the offences under this Part of this Act otherwise than by the local authority. (Sect. 66.)

### DUTY OF MEDICAL OFFICERS TO FURNISH PARTICULARS OF OVERCROWDING IN THEIR DISTRICT

It is the duty of medical officers of health to make to the Minister annual returns as to overcrowding in their districts and in particular, to furnish to him particulars of any cases in which dwelling-houses, of which the local authority have taken steps for the abatement of overcrowding, have again become overcrowded. (Sect. 67.)

## DEFINITIONS FOR PURPOSES OF PROVISIONS RELATING TO OVERCROWDING

The following expressions have the meanings hereby assigned to them respectively—

“Dwelling-house” means any premises used as a separate dwelling by members of the working classes or of a type suitable for such use;

“Landlord” means the immediate landlord of an occupier;

“Room” does not include any room of a type not normally used in the locality either as a living room or as a bedroom;

“Suitable alternative accommodation” means, in relation to the occupier of a dwelling-house, a dwelling-house as to which the following conditions are satisfied, viz.—

(a) the house must be a house in which the occupier and his family can live without causing it to be overcrowded;

(b) the local authority must certify the house to be suitable to the needs of the occupier and his family as respects security of tenure and proximity to place of work and otherwise, and to be suitable in relation to his means; and

(c) if the house belongs to the local authority they must certify it to be suitable to the needs of the occupier and his family, as respects extent of accommodation having regard to the standard specified in paragraph (b) of Sect. 136 of this Act. (Sect. 68.)

## LOCAL AUTHORITY FOR OVERCROWDING IN LONDON (OTHER THAN THE CITY)

The metropolitan borough council shall be the local authority for the purpose of the provisions of this Part of this Act other than the provisions of Sect. 57 of this Act relating to the submission of proposals for the provision of new houses required in order to abate overcrowding. (Sect. 69.)

## CONTRIBUTIONS BY LONDON COUNTY COUNCIL TO EXPENSES IN RELATION TO OVERCROWDING

The London County Council may, for the period to 31st May, 1941, pay to a metropolitan borough council a sum equal to half the expenses incurred by the last mentioned council in the remuneration of any person for purposes in connection with this Part of this Act. (Sect. 70.)

## PART V

### PROVISION OF HOUSING ACCOMMODATION FOR THE WORKING CLASSES

The slum problem is at present dominated by the shortage of houses. In the forefront of practical measures for solving the problem is the building of an adequate number of new houses for renting. These houses will be utilized: (1) To replace houses destroyed by enemy action; (2) To relieve overcrowding; (3) to enable unfit houses to be closed; and (4) to enable a start to be made on the clearance, improvement, and re-development of unhealthy areas.

It is necessary to emphasize that if new houses are to form an adequate part of the programme for the clearance of slums it is not sufficient to build houses—it must be made possible for the tenants to live in them—in particular having regard to the distance from the daily occupations of the tenants and the rents to be charged.

### GENERAL POWERS AND DUTIES OF LOCAL AUTHORITIES

The vast majority of houses for the working classes have been provided by private enterprise supplemented by: (1) Building societies; (2) friendly societies; (3) trade unions; (4) co-operative industrial societies; (5) philanthropic bodies; (6) employers of labour; (7) public utility societies, now Housing Associations; and (8) local authorities.

“Working classes” is a term which is very broadly interpreted by Parliament. A definition is given in the Housing Act, 1936, which is, however, limited to the purposes of the Eleventh Schedule to that Act and is as follows:—It includes mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed an average of three pounds a week and the families of any such persons who may be residing with them.

### DUTY OF LOCAL AUTHORITIES PERIODICALLY TO REVIEW HOUSING CONDITIONS IN THEIR AREAS AND TO FRAME PROPOSALS

It is the duty of every local authority—

- (1) To consider the housing conditions in their district and the

needs of the district with respect to the provision of further housing accommodation for the working classes, and for that purpose—

(a) to review the information that has been brought to their notice,

(i) either as a result of inspections and surveys carried out under Sect. 5 of this Act; or

(ii) otherwise, and

(b) as often as occasion arises, or within three months after notice has been given to them by the Minister.

(2) To prepare and submit to the Minister—

(a) proposals for the provision of new houses for the working classes,

(b) distinguishing those houses which the authority propose to provide for the purpose of rendering accommodation available for persons to be displaced by or in consequence of action taken by the authority under this Act. (Sect. 71.)

In London, the proposals and statements are to be submitted by (i) the Common Council of the City of London, and (ii) the County Council after consultation with the Metropolitan Borough Councils. (Sect. 104.)

## MODE OF PROVISION OF ACCOMMODATION

(1) Provision of housing accommodation by local authority

(a) by the erection of houses on any land acquired or appropriated by them—

(i) As regards the general type of house, it will be agreed that the non-parlour, three bedroomed (A3) house, which is being built by local authorities all over the country, just about meets the requirements. Under the official classification of houses erected the initial letter A denotes the non-parlour type; B, the parlour type. The number following the letter indicates the number of bedrooms.

(ii) The Minister, unless he is satisfied that, owing to special circumstances, some other standard of size or accommodation should be adopted—

(a) shall not approve the provision of any house which is not such a house as is specified in paragraph (a) or (b) of sub-sect. (2) of Sect. 1 of the Housing, etc., Act, 1923; and

(b) shall treat a house containing two bedrooms as providing accommodation for four persons; three bedrooms as providing accommodation for five persons; four bedrooms as providing accommodation for seven persons. (Sect. 136.)

(b) by the **Conversion** of any buildings into houses for the working classes.

The County Court has power, where there has been a change in the character of a neighbourhood, to allow on terms the conversion of single houses into two or more tenements, notwithstanding covenants against such conversions.

(c) by **Acquisition** of houses suitable for the purpose. (Sect. 72 (1) (c).)

(d) by **altering**, enlarging, repairing, or improving any houses or buildings which have, or any estate or interest in which has been acquired by the local authority. (Sect. 72 (1).) Any such powers as aforesaid may, for supplying the needs of the district, be exercised outside the district of the authority.

(2) The local authority may—

(a) alter, enlarge, repair, or improve any house so erected, converted, or acquired.

(b) fit out, furnish, and supply any such house with all requisite furniture, fittings, and conveniences. (Sect. 72 (2).)

(3) It shall be the duty of a local authority for the purposes of this Part of this Act to secure—

(a) that a fair wages clause is inserted in all contracts for the erection of the house; and

(b) except in so far as the Minister may, in any particular case, dispense with the observance of this paragraph, that the house is provided with a fixed bath in a bathroom.

(4) The provision of housing accommodation includes the provision of lodging-houses and separate houses or cottages containing one or several tenements, and, in the case of a cottage, a cottage with a garden of not more than one acre. (Sect. 72.)

#### **POWER OF LOCAL AUTHORITY TO ACQUIRE LAND FOR PROVISION OF ACCOMMODATION**

A local authority shall have power to acquire under this Part of the Act—

(a) Any land, including any houses or other buildings thereon as a site for the erection of houses for the working classes;

(b) Any estate or interest in any houses together with any land occupied with such houses or other buildings;

(c) Land for the purpose of—

(i) the lease or sale to other persons to erect dwellings;

(ii) the lease or sale for purposes necessary or desirable for or incidental to the development of the land as a building

estate, including the provision of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for, or for the convenience of persons belonging to the working classes *and other persons*. (Sect. 73.)

(d) By agreement or contract for a lease to them of dwelling-houses, whether built at the date of the contract or intended to be built hereafter.

(e) Land by agreement for the purpose of this Part of this Act, notwithstanding it is not immediately required, subject to conditions imposed by the Minister.

### MODE OF ACQUISITION OF LAND FOR PROVISION OF ACCOMMODATION

(1) Power to acquire land by agreement for the purposes of this Part of this Act.

(2) Compulsory acquisition of land by local authority within or without their area, in accordance with the First Schedule to this Act by means of a Compulsory Purchase Order made and submitted to the Minister and confirmed by him.

### RESTRICTIONS AS TO COMPULSORY ACQUISITION OF LAND

Nothing in this Act shall authorize the compulsory acquisition for the purposes of this Part of this Act of any land which is the property of any local authority, or which is the property of statutory undertakers having been acquired by them for the purposes of their undertaking or which forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any house. (Sect. 75.)

The procedure is as follows—

(a) Compulsory Purchase Order submitted to the Minister and approved by him.

(b) Notice to owners, lessees, and occupiers.

(c) Notice to treat.

(d) Notice of entry.

(e) Claim in accordance with the Lands Clauses Consolidation Act, 1845.

The Local Government (Compulsory Purchase) Regulations, 1934 (S.R. & O. No. 263) have been issued by the Minister of Health in pursuance of the powers conferred on him by Sects. 160, 161, 168, and 175 of the Local Government Act, 1933.

(3) Where land is purchased compulsorily by a local authority under this section, the compensation payable shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, subject to observance of the rules specified in the Fourth Schedule to this Act.

(4) The provisions of the Second Schedule to this Act shall have effect with respect to the validity and date of operation of a Compulsory Purchase Order made under this Section. (Sect. 74.)

### **APPROPRIATION OF ANY LAND FOR PROVISION OF ACCOMMODATION**

A local authority may appropriate any houses or land vested in them with the consent of the Minister. (Sect. 76.)

Trustees of any dwelling-houses for the working classes provided by private subscriptions or otherwise may sell or lease the houses to the local authority.

The Ministry of Works may sell or let land to a local authority for the purposes of Part III of the 1925 Act or any part of the land if the Minister is satisfied that the acquisition of the land by the local authority is desirable in the national interest.

### **POWER TO ACQUIRE WATER RIGHTS FOR HOUSES PROVIDED**

(1) A local authority or a county council may, notwithstanding anything in Sect. 327 of the Public Health Act, 1875, and Sect. 331 of the Public Health Act, 1936, but subject to the provisions of Part IV of the Public Health Act, 1936, be authorized to acquire water rights for the purpose of affording a water supply for houses provided under this Part of this Act.

(2) Any expenses incurred by a local authority under this Section in connection with any houses provided shall be treated as part of the expenses of providing those houses. (Sect. 78.)

### **POWERS OF DEALING WITH LAND ACQUIRED OR APPROPRIATED FOR PROVISION OF ACCOMMODATION**

(1) A local authority may—

(a) Lay out and construct public streets, roads, and open spaces on the land;

(b) Sell or lease the land or part thereof, with the consent of the Minister, to any person for the purpose of erecting and maintaining houses suitable for the working classes subject to conditions that he will—



(i) lay out and construct public streets or roads and open space on the land; or

(ii) use the land for purposes which are necessary and desirable for or incidental to the development of the land as a building estate, including

(iii) the provision, maintenance and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for or for the convenience of persons belonging to the working classes and other persons.

(c) Sell the land or exchange the land, or part thereof, with the consent of the Minister, for land better adapted for the purpose.

(d) Sell or lease any houses on the land or erected by them subject to such covenants and conditions as they may think fit to impose.

(2) Power of local authority to contribute towards the expenses of the development of land and the laying out and construction of streets thereon.

(3) Land and houses sold or leased under the provisions of this section shall be sold or leased at the best price or for the best rent that can reasonably be obtained, having regard to any condition imposed.

(4) Where a local authority acquire a house or other building which can be made suitable as a house for the working classes or an estate or interest in such, they shall forthwith proceed with the work.

(5) The provisions of Sect. 128 to 132 of the Lands Clauses Consolidation Act, 1845 (which relate to the sale of superfluous land) shall not apply.

(6) For the purposes of this section "sale" includes sale in consideration of a chief rent, rentcharge, or other similar periodical payment, and "sell" has a corresponding meaning. (Sect. 79.)

#### **SUPPLEMENTARY POWERS IN CONNECTION WITH PROVISION OF ACCOMMODATION**

(1) The powers of a local authority to provide housing accommodation shall include a shop, any recreation grounds, or other buildings which will serve a beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided.

(2) The Minister in giving his consent may apply thereto any statutory provisions which would have been applicable thereto under any enactment.

(3) The powers of the London County Council and of a metropolitan borough council to provide housing accommodation shall include power to provide and maintain any building for use for any commercial purpose. (Sect. 80.)

### **EXECUTION OF WORKS IN CONNECTION WITH HOUSING OPERATIONS BY LOCAL AUTHORITY OUTSIDE ITS OWN AREA**

(1) Where housing operations are being carried out by a local authority outside its own area that authority shall be subject to the approval of the Minister and to agreement with the council of the county or district in which the scheme is being carried out.

(2) Where housing operations have necessitated the construction of streets and roads, the liability to maintain shall vest in the council of the borough or district in which the operations were carried out.

(3) Where housing operations have been carried out by a local authority outside their own district, a habitation certificate shall not be necessary in respect of any of the houses which were constructed in accordance with plans and specifications approved by the Minister. (Sect. 81.)

### **ADJUSTMENT OF DIFFERENCES BETWEEN LOCAL AUTHORITIES AS TO CARRYING OUT PROPOSALS**

Where differences arise between two authorities in relation to the provision of houses the matter may be referred by either authority to the Minister, whose decision shall be final and binding on the authorities. (Sect. 82.)

Contracts under the Housing Acts must be made in conformity with the standing orders of the local authority, as provided by the Local Government Act, 1933, Sect. 266.

### **BUILDING MATERIALS AND HOUSING ACT, 1945**

This Act authorizes the Treasury to make advances to the Minister of Works to form the Building Materials and Housing Fund, facilitate the production, equipment, repair, alteration and acquisition of houses and other buildings.

It also raises the limit of value of houses in respect of which an advance may be made under Sect. 92 of the Housing Act, 1935, or an advance or guarantee may be made or given under Sect. 91 of the Housing Act, 1936, from £800 to £1,500.

The Act further provides that where a house has been constructed under a building licence granted for the purposes of a Defence Regulation, and the licence contains a condition limiting

the price for which the house may be sold or the rent at which it may be let, any person who sells or lets or offers to sell or let the house at more than the permitted price or rent shall be liable on summary conviction to a fine or imprisonment or both. Such a condition is to have effect as if it were a local land charge within Sect. 15 of the Land Charges Act, 1925, and must be registered by the local authority accordingly.

## MANAGEMENT, ETC., OF LOCAL AUTHORITY'S HOUSES

### MANAGEMENT AND INSPECTION OF LOCAL AUTHORITY'S HOUSES

(1) **The General Management**, regulation and control of houses provided by a local authority under this Part of this Act are vested in and exercised by them. (Sect. 83.)

(2) **Inspection** of houses may be made by the local authority for the district or its officers. (Sect. 83.)

**By-laws** for the management, use, and regulation of the houses shall be made by the local authority.

### CONDITIONS TO BE OBSERVED IN MANAGEMENT OF LOCAL AUTHORITY'S HOUSES

A local authority shall, in relation to all houses and dwellings in respect of which they are required by Sect. 128 of this Act to keep a Housing Revenue Account, observe the requirements specified in the provisions contained in Sect. 85.

### CONDITIONS ON SALE OF LOCAL AUTHORITY'S HOUSES

If any house, building, land or dwelling in respect of which a local authority are required by Sect. 128 of this Act to keep a Housing Revenue Account is sold by the authority with the consent of the Minister, he may in giving his consent impose such conditions as he thinks just. (Sect. 86.)

### POWER TO ESTABLISH HOUSING MANAGEMENT COMMISSIONS

Sect. 87 provides that—

(1) Where it appears to a local authority expedient that a Housing Management Commission should be established, with a view to the transfer to and the performance by the Commission of all or any of the functions of the authority under the enactments relating to housing, with respect to

- (i) the management, regulation and control; and
- (ii) the repair and maintenance

of working class houses, etc., the authority shall prepare and submit to the Minister a scheme making provision for the establishment of the Commission; and for the incorporation thereof, under the name of the Housing Management Commission with

(i) the addition of the name of the district of the local authority;

(ii) perpetual succession and a common seal, and

(iii) power to hold land for the purposes of their constitution without licence in mortmain.

(2) The scheme may provide, among other things, that the Chairman of a Commission may be paid remuneration, the Commission may employ its own staff, may have property transferred to it, etc.

### SPECIAL PROVISIONS AS TO RURAL DISTRICTS

The proper housing of agricultural workers must form an essential element in any progressive agricultural policy. The Act provides for the co-operation of the County Councils and Rural District Councils in attacking this serious and important problem, and the Minister has urged that in every county the authorities without delay should meet together to formulate plans for dealing comprehensively with the rural needs.

### DUTY OF COUNTY COUNCIL IN RESPECT OF HOUSING CONDITIONS IN RURAL DISTRICTS

(1) It shall be the duty of the council of every county, as respects each rural district within the county, to have constant regard to the housing conditions of persons of the working classes.

(2) The council of every rural district shall at such intervals, not being in any case less than one year, as the county council may direct, furnish to that council such information with regard to the above-mentioned matters as the county council may reasonably require. (Sect. 88.)

### AGREEMENTS BY COUNTY COUNCIL FOR ASSISTING RURAL DISTRICT COUNCILS IN PROVISION OF ACCOMMODATION

The council of any county may for the purpose of assisting the council of any rural district within the county in the performance of their duties under this Part of this Act—

(a) agree with the District Council for the exercise by the County Council of all or any of the powers of the Rural District Council under that Part.

(b) assist the Rural District Council by contributions to expenses and in any other way. (Sect. 89.)

Where the Rural District Council build houses for agricultural workers or people of substantially the same economic level, the County Council shall undertake to make a contribution of £1 10s. per house per year for forty years. This would partially spread the charge over the whole county for the provision of such cottages. (Sect. 115.) The County Council may contribute to the houses built by the Rural District Council.

THE HOUSING (RURAL AUTHORITIES) ACT, 1931 provides further assistance to be given to rural housing authorities in regard to the provision of houses in agricultural parishes in England and in rural areas in Scotland for agricultural workers and for persons whose economic condition is substantially the same as that of such workers. It amends the provisions of Sect. 3 of the Housing (Financial Provisions) Act, 1924, with respect to the rent of such houses.

HOUSING (RURAL WORKERS) AMENDMENT ACT, 1938. This Act amended the Housing (Rural Workers) Acts, 1926 and 1931. Under these Acts, county and county borough councils were authorized to make grants or loans to owners of houses let to agricultural labourers, or persons of substantially the same economic status, for the reconstruction and improvement of their homes. The provisions were due to expire on the 24th June, 1938, but were extended owing to war conditions. A grant was normally limited to £100 in respect of any one house, and could be paid in instalments as the work proceeded. For the abatement of overcrowding additional assistance could be given, but not exceeding two-thirds of the estimated cost of the new works or £100, whichever was the less. The total amount of the original and new overcrowding grants is limited to £150.

Opportunity was taken to introduce amendments as to the conditions under which grants were made and the method of ascertaining the amounts of advances repayable. Where sums become payable by owners to local authorities and by local authorities to the Exchequer, the sums so repayable are to be calculated by reference to the unexpired part only of the period of twenty years.

The Act did not apply to the County of London and there are special provisions relating to Scotland.

The Rural Workers Acts were allowed to expire on the 30th September 1945.

POWER OF CERTAIN AUTHORITIES TO ASSIST  
FINANCIALLY THE ERECTION OF HOUSES,  
IMPROVEMENT OF HOUSING ACCOMMODATION, ETC.

LOANS BY LOCAL AUTHORITIES FOR THE  
IMPROVEMENT OF HOUSING ACCOMMODATION

(1) If the owner of a house or building applies to the local authority of the district for assistance for the purpose of carrying out works for the reconstruction, enlargement, or improvement thereof, and the local authority are of opinion that after the works are carried out the house or building would be in all respects fit for habitation as a house or houses for the working classes, and that the circumstances of the district are such as to make it desirable that the work should be carried out, the local authority may lend to the owner the whole or part of such sum as may be necessary to defray the cost of the works and any expenses incidental thereto, provided the loan shall not exceed one-half of the estimated value of the property mortgaged unless some additional security is provided.

(2) Before the works are commenced, plans and specifications shall be submitted to the local authority for approval.

(3) For the purposes of this section "owner" means any person whose interest, or any number of persons whose combined interests, constitutes or constitute either an estate simple in possession or a leasehold interest in possession for a term of years absolute whereof a period of not less than ten years in excess of the period fixed for the repayment of the loan remains unexpired at the date of the loan. (Sect. 90.)

POWER OF LOCAL AUTHORITIES TO MAKE ADVANCES,  
ETC., FOR THE PURPOSES OF INCREASING HOUSING  
ACCOMMODATION

(1) A local authority or a county council may subject to such conditions as may be prepared by the Minister—

(a) advance money, subject to the provision hereinafter contained, to persons or bodies of persons—

(i) constructing or altering or undertaking to construct or alter houses; or

(ii) carrying out or undertaking to carry out repairs to any house; or

(iii) acquiring or undertaking to acquire houses the construction of which was begun after the 25th April, 1923,

whether such houses are within or without the district of the authority or council;

(b) undertake to guarantee the repayment to a society incorporated under the Building Societies Acts, 1874 to 1894, or the Industrial and Provident Societies Acts, 1893 to 1928, of any advances, with interest thereon, made by the society to any of its members;

(c) in the case of the conversion of a house into two or more separate and self-contained flats, undertake that, if the aggregate rateable value of the flats exceed the rateable value of the house before conversion, they will, during such period not exceeding twenty years, refund to the person the difference between the rates paid by him and the rates which would have been payable.

(2) Any such advance as aforesaid shall be subject to the following conditions—

(a) the advance with interest shall be secured by mortgage and the advance shall not exceed 90 per cent of the value of the interest of the mortgagor in the property; and

(b) the advance may be made by instalments from time to time as the building, alteration, or repair of the house progresses, so, however, that the total advance does not at any time before the completion of the house exceed 50 per cent of the value of the work done up to that time; and

(c) the advance shall not be made except after a valuation duly made on behalf of the authority or council; and

(d) where the interest is leasehold, no advance shall be made unless that interest is a term of years absolute whereof a period of not less than ten years in excess of the period fixed for the repayment of the advance remains unexpired at the date of the advance. (Sect. 91.)

### LOANS BY PUBLIC WORKS LOAN COMMISSIONERS TO COMPANIES, ETC.

The Public Works Loan Commissioners may subject to the provisions of this section lend money to any railway, dock or harbour authority, housing association, any company, society or association for building or improving houses, or any owner of an estate in fee simple, or for 50 years unexpired term for the purposes of the Act. (Sect. 92.)

### HOUSING ASSOCIATIONS, ETC.

The use by the State of societies of public utility for building seems to have originated in Germany, where, since the Old Age and Infirmary Insurance Act, 1889, National Insurance Funds were largely invested in these societies. In this country they

became officially recognized in the Housing, Town Planning, etc., Act, 1909, Sect. 4. For reference to Public Utility Societies in the Act of 1925 and in the Act of 1930 there shall be substituted references to a "Housing Association."

1. *A Housing Association* is defined in the Housing Act, 1936, as any society, body of trustees or company established for the purpose of, or amongst whose objects or powers are included those of constructing, improving or managing, or facilitating or encouraging the construction or improvement of, houses for the working classes, being a society, company or body of trustees who do not trade for profit or whose constitution or rules prohibit the issue of any capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury, whether with or without differentiation as between share and loan capital. (Sect. 188 (1)).

This rate at present is 5 per cent. Any surplus profit must be expended for the benefit of the society's tenants.

2. *It is quite distinct from a building society*, the function of which is mainly to lend money upon mortgages of house property, but a housing association actually builds houses for the working classes.

3. *Advantages of Housing Association—*

(a) The formation of a housing association enables an employer, group of employers, a philanthropic body, a social agency, or any group of people who wish to help in meeting the housing shortage, to take advantage of the facilities offered in the Housing Acts.

(b) Building houses through a housing association has very definite advantages—

(i) It provides houses which can be rented and need not be bought.

(ii) By the opportunities it gives for representation of tenants on the board of managers, for audit of accounts by public auditors, and security of tenure, it creates a strong community spirit, and consequently a disposition towards good tenancy.

(iii) At the same time, by letting contracts for a number of houses at once, it gives full scope to private enterprise, and obtains the most favourable terms.

## POWER OF LOCAL AUTHORITIES AND COUNTY COUNCILS TO PROMOTE AND ASSIST HOUSING ASSOCIATIONS

(1) Promote the formation or extension of societies or assist society as provided by the Act.



(2) County Council may acquire land for society to erect dwelling-houses where local authority is unwilling to do so.

(3) Any local authority, or County Council with the consent of the Minister, may—

- (a) make grants or loans to the association;
- (b) subscribe for any share or loan capital of the association;
- (c) guarantee, or join in guaranteeing the payment of interest on money borrowed, or of any share or loan capital issued by the association. (Sect. 93.)

#### **POWER OF LOCAL AUTHORITIES TO MAKE ARRANGEMENTS WITH HOUSING ASSOCIATIONS**

A local authority may, with the approval of the Minister, make arrangements with a housing association to—

- (a) provide housing accommodation for persons displaced by any action taken by the authority under Part II or Part III of the Act
  - (i) for dealing with clearance or re-development areas, or
  - (ii) for the demolition of insanitary houses, or
  - (iii) for abatement of overcrowding, or
- (b) alter, enlarge, repair, or improve houses or buildings. (Sect. 94.)

#### **POWER OF MINISTER TO RECOGNIZE CENTRAL HOUSING ASSOCIATION**

If a central housing association or similar body exists, or is formed, for promoting the formation and extension of housing associations and generally advising and assisting them, the Minister may for a limited period—5 years—make an annual grant in aid of their expenses. (Sect. 96.)

The Minister has recognized the National Federation of Housing Societies which was incorporated on the 22nd June, 1935, and which has taken over the work carried out since 1919 by the Garden Cities and Town Planning Association, with offices at the Housing Centre, 13 Suffolk Street, London, S.W.1.

#### **MISCELLANEOUS**

##### **POWER OF COUNTY COUNCILS AND MENTAL HOSPITAL BOARDS TO PROVIDE HOUSES FOR THEIR EMPLOYEES**

1. County Council and Mental Hospital Boards have power to provide houses for persons in their employment. (Sect. 97.)

2. A County Council may, subject to such conditions as may be approved—

(a) Advance money up to 90 per cent of the ascertained value to persons or bodies of persons—

(i) constructing or altering or undertaking to construct or alter houses; or

(ii) acquiring or undertaking to acquire houses, for any persons of the working classes.

(b) Undertake to guarantee the repayment to a Housing Association, of any advances, with interest thereon, made by the Society to any of its members for the purpose of enabling them to build houses or acquire houses.

(Note. The construction of houses subject to provisions of paragraph (2) must have been commenced after the 25th April, 1923, whether within or without the area of the County Council.)

(c) Refund to landlord certain proportions of the increased rates, consequent upon the conversion of a house into flats.

3. The Housing Act, 1924, provided for the increased subsidy of £9 a year for forty years to be available for houses built by County Councils and Mental Hospital Boards.

4. County Councils have powers under Sect. 70 to assist housing associations as described on page 361.

## EMPLOYERS

Employers can assist housing by—

(a) Promoting a housing association securing the above advantages, e.g. Swanpool Garden Suburb, Lincoln.

(b) Erecting dwellings for accommodation of all or any of the persons of the working classes employed by them and securing a loan from the Public Works Loan Commissioners. (Sect. 98.)

(c) Purchasing land as private individuals and erecting dwelling-houses for the working classes, securing a loan from the Public Works Loan Commissioners. (Sect. 90 (2) (b).)

## PRIVATE OWNERS

(1) Private owners, including tenants for life of settled estates, have power of selling, granting, exchanging and leasing land for the purpose of dwelling-houses for the working classes as conferred by the Settled Land Act, 1925. (Sect. 74.)

(2) Trusts for provision of houses for working classes may, with the consent of a majority of the Committee or other persons by whom they were appointed trustees, sell or lease the houses to the local authority of the district, or make over to them the management thereof. (Sect. 99.)

(3) Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of houses for the working classes at such price, or for such consideration, or for such rent as can reasonably be obtained. (Sect. 100.)

(4) Power is given to water and gas companies to supply water or gas for houses provided under this Part of this Act on favourable terms. (Sect. 101.)

### PROVISIONS AS TO LONDON

As respects the administrative County of London, other than the City of London, the question whether in any case the London County Council or the metropolitan borough council are to be the local authority for the purposes of this Part of this Act shall be determined in accordance with the provisions of Sect. 103.

### PART VI—FINANCIAL PROVISIONS

#### RATE CONTRIBUTIONS

As no state aid was provided for housing prior to the Act of 1919, any annual loss under earlier Acts fell entirely on local rates. Under the Act of 1919 the local authority had to bear any annual loss up to a rate of 1d. in the £ and also loan charges on disallowed capital expenditure. Re-housing expenses were included in the 1d. rate limit for schemes promoted under the Act of 1919. There was no statutory obligation to contribute out of rates towards subsidies granted under the Act of 1923, but some local authorities contributed a sum equal to the Exchequer Grant, namely £6 or £4 per house per annum for twenty years. From the operation of the Act of 1923 until the operation of the Act of 1930, the local authorities shared equally with the Government any losses on re-housing schemes. Under the Act of 1924, if the local authority could not let the houses built under that Act at not less than the appropriate normal rents of pre-war houses, a rate contribution had to be made until a sum equal to one-half the amount of the state grant was reached, namely £4 10s. or £3 15s. per house per year for forty years calculated by reference to a period of sixty years, before the aggregate rents of the houses could be made to bear any additional loss.

Under the Act of 1930, the local authority was required to make a contribution of £3 15s. per house for forty years, calculated with reference to a period of sixty years. Under the Act of 1933, local authorities were authorised to contribute one-third of the loss sustained by a building society under an excess advance guaranteed by the local authority. Under the Act of 1935 the rate contributions are one-half the amount of the state subsidy for the same period as the state subsidy, but calculated with reference to

a period of sixty years. For abating agricultural overcrowding the rate contribution was limited to the sixty years equivalent of £1 for forty years. County Councils also contributed not less than £1 per house in this case. For reconditioning rural cottages under the Act of 1926 the rate contributed was the same as the state subsidy. In no case, however, is there any limit to the amount of rate aid which may be supplied.

*The Housing (Temporary Accommodation) Act, 1944*, made provision for the supply and use of temporary structures for a period of ten years. The Ministry of Works supply and erect the prefabricated bungalows for which the local authority pay the Government at the rate of £23 10s. per annum for ten years. It is anticipated that a net deficit of £4 per house per annum will fall on local rates after all outgoings have been met. Should the loss be greater, the Minister is authorized to pay 80 per cent of the additional loss and to give consideration to giving additional help if the loss, due to exceptional circumstances, is more than £8.

*The Housing (Financial and Miscellaneous Provisions) Act, 1946*, contains the financial provisions in respect of permanent houses. The normal rate contributions will be one-third of the Exchequer grants. For cottages the rate contribution will be £5 10s. per house per annum for 60 years. For houses for the agricultural population the rate contribution will be £3 shared equally between the county council and county district council. For blocks of flats on expensive sites the rate contribution will be £9 10s. per flat for 60 years where the cost is over £1,500 per acre, increasing according to a scale based upon the increasing cost of the site. For flats of four storeys or more in which lifts are provided an additional rate contribution of £3 10s. will be paid, being one-half of an additional grant of £7.

### CONSOLIDATION OF SUBSIDIES

The Exchequer assistance provided for housing purposes is dealt with in Chapter XXVI (Grants-in-aid). As recommended by the "Ray" Committee on Local Expenditure, the Minister of Health, after consultation and some measure of agreement with local authorities, obtained authority under the provisions of the Act of 1935 (now 1936 Act, Seventh Schedule) to consolidate the subsidies payable by the Exchequer and the local authorities by prescribing the amounts which should be credited to the Housing Revenue Account therefor. The provisions are too technical to be reproduced here but, generally, it may be stated that the financial position prior to the passing of the Act of 1935 has been made the basis for the sums to be credited and the above provisions substantially continue.

THE HOUSING (FINANCIAL PROVISIONS) ACT, 1938, amalgamated the subsidies for slum clearance and overcrowding into a new composite grant and increased the grant in respect of buildings on sites of high value and made certain other changes as described in Chapter XXVI.

## RENTS

Provisions with regard to subsidies or rents to be charged contained in Housing Acts prior to the 1935 Act resulted in different rents being charged for similar houses because they were built under different schemes. It was with a view to freeing local authorities from the circumstances which produced this state of affairs that the Housing Act, 1930, introduced a new principle which is now contained in Sect. 85 of the 1936 Act. The rents ordinarily payable by the working classes must be taken into consideration, but the individual circumstances of tenants may also be considered in charging rents. If the aggregate rents charged are less than the amount required to balance the Housing Revenue Account, the deficiency, so far as it cannot be made good out of the surpluses of other years, must be made good out of rate funds. If the rents exceed the amount required the surplus cannot be carried immediately to the relief of rates, but must be carried forward for a quinquennial review as described below.

The fixing of rents in accordance with a means test was held to be valid in the case of *Leeds Corporation v. Jenkinson* (1934); 32 L.G.R. 416. It is recognized that some tenants transferred from slum premises may not be able to pay the normal rents based upon costs less the subsidies. Others can pay what approaches nearer an economic rent. In Circular 1138 (19th August, 1930) the Minister stated "Rent relief should be given only to those who need it and only for so long as they need it" and "The rents charged to individual tenants should be revised every few months."

## HOUSING ACCOUNTS

Among the General Memoranda (A. to E.) issued by the Minister of Health to indicate the chief provisions of the Housing Act, 1935, D. (Financial Provisions) and E. (Consolidation of Housing Contributions and Accounts) explain the important changes affecting accountancy procedure. The information they contain continues to apply although the statutory provisions have been consolidated in the Act of 1936.

A Housing Revenue Account must be kept to contain a record of the income and expenditure stipulated in the Act. (Sect. 128.)

Rents, Exchequer grants, and rate contributions are the chief credits and loan charges, management expenses, taxes, and contributions to the Housing Repairs and Equalization Accounts are the chief debits. Any deficiency must be made up by an additional contribution from the rates. Any surpluses on revenue account may be used to repay these additional contributions. Otherwise any surplus is carried forward until each quinquennial review. With the consent of the Minister of Health the surplus, or any part, may be transferred to Repairs Account, or it may be carried forward. In so far as it is not applied for these purposes it will be divided between the Minister and the local authority in proportion to their respective contributions during the quinquennium.

A Housing Repairs Account must be kept for the purpose of equalizing annual charges to revenue for repairs and maintenance. A contribution of not less than £4 per house must be transferred from the Revenue Account, plus the deficit, if any, for the previous year. The Minister is empowered to authorize reduction or suspension of the revenue contribution if satisfied that the balance of the Account is more than sufficient for the purpose, or he may authorize the closing of the account, if no longer required, and direct how any balance shall be applied.

A Housing Equalization Account may be kept to spread the Exchequer and rate contributions equally over the period of the loan charges. This was requisite when the contributions were payable for forty years, whereas the greater part of the loan charges were payable for sixty years. The transfer from Revenue Account was normally one-seventh of the Exchequer and rate contributions. The account was varied or closed in a similar manner to the Repairs Accounts.

**Housing Acts (Equalization Account) Regulations, 1938.** These regulations revoked and reproduced in an amended form the Regulations of 1936. The amendment became necessary by the repeal of the Acts of 1930 and 1935 and the passing of the Acts of 1935 and 1938. There was no alteration in the provisions of the Regulations, and the amount of the credit remained at one-seventh part of the grants.

Any balances standing to the credit of the Repairs and Equalization Accounts could be used for any statutory borrowing power or otherwise be invested in statutory securities. This remains true regarding the Repairs Account, but the keeping of an Equalization Account is now optional.

## **BORROWING POWERS**

The borrowing powers contained in Part IX of the Local

Government Act, 1933, are supplemented by certain provisions of the Housing Act, 1936. With a few exceptions money may be borrowed for Part II (Repair of Insanitary Houses), Part III (Clearance and Re-development Schemes), Part IV (Abatement of Overcrowding) and Part V (Provision of Houses). The maximum period for repayment of loans is eighty years (Local Government Act, 1933, Eighth Schedule). But this applies only to land; an equated period of sixty years is now being used. To the methods of borrowing provided in the Act of 1933, there is added the power to issue local housing bonds with the consent of the Minister of Health. Special provisions with regard to local authorities in London are contained in Sect. 119. County councils and mental hospital boards are empowered to borrow for the purposes of the Act. The Public Works Loan Commissioners are specially empowered to lend local authorities or county councils money for the purpose of making advances to persons other than local authorities and for advances and guarantees for the purpose of increasing housing accommodation in addition to their general power of making loans to local authorities.

Money standing to the credit of the Housing Repairs and Housing Equalization Accounts may be utilized in lieu of outside borrowing for authorized purposes.

County Councils are authorized to lend money to local authorities within their area for housing purposes. (Sect. 124.) The Minister has issued the Housing (Loans by County Councils) Order, 1925, to regulate procedure.

Special mention may be made of the power given to housing authorities and the Public Works Loan Board to borrow in order to lend on mortgage to owners of property for the purpose of improving housing accommodation. Not more than one-half of the estimated value of the property must be advanced unless the excess is covered by some collateral security.

Post-war Borrowing is dealt with in Chapter XXVII.

## PART VII—GENERAL

### CENTRAL HOUSING ADVISORY COMMITTEE

(1) The Minister shall appoint a Central Housing Advisory Committee for the purpose of—

(a) advising the Minister on any matter relating to a temporary increase of the permitted number of persons in relation to overcrowding, as respects which he is required by Sect. 60 to consult the Committee;

(b) advising Housing Management Commissions under Sect.

87 on any matter as respects which such Commissions are required to consult the Committee;

(c) advising the Minister on any question which may be referred by him to the Committee on any other matter arising in connection with the execution of the enactments relating to Housing.

(2) The Minister may by order make provision with respect to the constitution and procedure of the Committee, and such order may be varied by a subsequent order.

(3) The Minister may, out of moneys provided by Parliament, pay such expenses of the Committee as he may, with the approval of the Treasury, determine. (Sect. 135.)

The Committee have a Women's Sub-committee, also Sub-committees on Dwellings Design, Rural Housing, Private Enterprise, and Temporary Construction. There is also an Inter-Departmental Committee with the Ministry of Town and Country Planning on Building Methods. The question of design has been made the responsibility of the Ministry of Works.

With Circular No. 1740, 31st October, 1938, the Minister sent to housing authorities a Report of the Committee's Sub-committee on "The Management of Municipal Housing Estates."

#### PROVISIONS AS TO BUILDING BY-LAWS, ETC.

(1) Relaxation of building by-laws in connection with housing operations carried out by a local authority, county council, housing association or trust, so far as they are inconsistent with the plans and specifications so approved. (Sect. 138.)

(2) Building by-laws are not to apply to new streets laid out by a local authority or a county council in accordance with approved plans and specifications. (Sect. 139.) See also Public Health Act, 1936, Sect. 346 (2).

(3) Provisions as to by-laws relating to new streets under a code prescribed by the Minister and adopted by resolution of the local authority. (Sect. 140.)

(4) Power of Minister to revoke unreasonable by-laws with respect to new streets or buildings which are in force. (Sect. 141.)

#### PROVISIONS AS TO ACQUISITION, ETC., OF LAND PROTECTION FOR AMENITIES OF LOCALITY, ETC.

A local authority in

(a) preparing any proposals for the provision of houses, or

(b) taking any action under the Act shall have regard to—

(i) the beauty of the landscape or countryside, and



- (ii) the other amenities of the locality, and
  - (iii) the desirability of preserving existing works of architectural, historic, or artistic interest;
- and shall comply with such directions, if any, in that behalf as may be given to them by the Minister. (Sect. 142.)

### PROVISIONS AS TO COMMONS AND OPEN SPACES

Provision as to Commons and Open Spaces by an Order under this Act shall be provisional only until it is confirmed by Parliament. (Sect. 143.)

Provision as to land in the neighbourhood of royal palaces and parks is subject to the recommendations of the Ministry of Works. (Sect. 144.)

### POWER OF ENTRY ON LAND ACQUIRED

(1) Where by an Order made and confirmed under Part III of this Act a local authority are authorized to purchase land compulsorily, then at any time after serving notice to treat and after giving the owner and occupier twenty-eight days' notice they may enter and take possession of the land. (Sect. 145.) Under Part V the notice is reduced to fourteen days.

A local authority cannot use property for purposes for which it has no powers. (*Dundee Harbour Trustees v. Nicol*, [1915] A.C. 550; *Attorney-General v. Hanwell U.D.C.*, [1900] 2 Ch. 377.)

### DEFAULT OF LOCAL AUTHORITIES

#### POWERS OF COUNTY COUNCIL AND MINISTER IN THE EVENT OF DEFAULT OF RURAL DISTRICT COUNCIL

(1) In any case where complaints that the local authority have failed to exercise their powers under this Act may be made to the County Council by—

- (i) the Parish Council or Parish Meeting of any parish comprised in the rural district; or
- (ii) any justice of the peace acting for the district; or
- (iii) any four or more Local Government electors of the district, or

the County Council may itself decide that an investigation should be made as to whether the council of any rural district have failed as aforesaid, a

Public Local Inquiry may be held by the County Council, and if satisfied that there has been such a failure on the part of the District Council, the County Council may—

(a) make an Order declaring the District Council to be in default, and

(b) transfer to themselves all or any of the powers of the District Council under the Act with respect to the whole or any part of the district.

(2) An Order made under the preceding subsection may provide that Sect. 63 of the Local Government Act, 1894, shall, subject to such modifications as may be specified in the Order, apply in relation to the powers transferred.

(3) Government Contributions in respect of Part V of this Act shall, with the necessary modification of the provisions, apply to that County Council as they apply in relation to a local authority.

(4) If on Representations made to the Minister—

(1) by any justice of the peace acting for any rural district, or

(2) by any four or more Local Government electors of any rural district, or

(3) otherwise,

it appears to the Minister—

(a) that the County Council have failed or refused to make an Order as above in any case where they should have made such an Order, or

(b) that any such Order is defective, or

(c) that it does not apply to any part of the district to which it should have applied,  
the Minister may—

(i) if the County Council have not made an Order, himself make any Order which the County Council might have made, or

(ii) if an Order is a defective Order, himself make a supplementary Order enlarging the scope of the County Council's Order in such manner as he thinks fit. (Sect. 169.)

#### POWERS OF MINISTER IN THE EVENT OF DEFAULT BY COUNTY COUNCIL IN EXERCISE OF TRANSFERRED POWERS

In the event of default by the County Council in the exercise of transferred powers upon representations made to the Minister by persons named in paragraph 4 (1), (2), (3), above—

(a) the Minister may cause a public local inquiry to be held, and

(b) if satisfied that the County Council have failed as aforesaid, he may either—

- (i) make an Order directing the County Council to exercise such of the said powers in such manner and within such time as may be specified in his Order, or
- (ii) make an Order rendering any of the said powers exercisable by himself. (Sect. 170.)

#### POWER OF MINISTER IN THE EVENT OF DEFAULT OF LOCAL AUTHORITY OTHER THAN RURAL DISTRICT COUNCILS

(1) In any case where—

- (a) A complaint has been made to the Minister,
- (i) as respects the council of any urban district by the council of the county in which the district is situate, or by any justice of the peace acting or the district, or by any four or more Local Government electors of the district; or
- (ii) as respects any local authority, not being the council of an Urban or Rural District, by any justice of the peace acting for the area of the authority, or by any four or more Local Government electors of the area of the authority,

that the local authority have failed to exercise their powers under this Act in any case where these powers ought to have been exercised; or

(b) the Minister is of opinion that an investigation should be made as to whether any local authority (not being a Rural District Council) have failed as aforesaid—

the Minister may cause a public local enquiry to be held, and

(a) if, after the inquiry has been held, he is satisfied that there has been such a failure on the part of the local authority,

(b) he may make an Order

- (i) declaring the local authority to be in default, and
- (ii) directing the authority to exercise for the purpose of remedying the default such of their powers, and in such manner and within such time or times as may be specified in the Order.

(2) If a local authority with respect to whom an Order has been made under the preceding sub-section fail to comply with any

requirements thereof, within the time limited thereby for compliance with that requirement, the Minister, in lieu of enforcing the Order, may, if he thinks fit, adopt one of the following courses—

(a) if the local authority is the council of an urban district, he may make an Order directing the County Council within which the district is situate to perform such of the obligations of the District Council under the original Order, within such times as may be specified in his Order addressed to the County Council; or

(b) in any case, he may make an Order rendering exercisable by himself such of the powers of the local authority under this Act as may be specified in his Order. (Sect. 171.)

#### PROVISIONS AS TO ORDERS DIRECTING COUNTY COUNCIL TO PERFORM OBLIGATIONS OF URBAN DISTRICT COUNCILS

(1) An Order, directing a County Council to perform any obligations of an Urban District Council, may for the purpose of enabling the County Council to comply with the Order—

(a) transfer to the County Council any of the powers conferred by this Act on local authorities;

(b) provide that Sect. 63 of the Local Government Act, 1894, shall, subject to such modifications and adaptations as may be specified in the Order, apply in relation to the powers so transferred as it applies in relation to powers transferred under that Act.

(2) Where such an Order transfers to the County Council any of the powers of a local authority under Part V of this Act, the provision Sect. 105 of this Act relating to Government contributions shall, with the necessary modifications, apply in relation to that County Council as they apply in relation to a local authority, and the Minister may make or undertake to make contributions accordingly. (Sect. 172.)

#### POWER OF MINISTER TO WITHHOLD CONTRIBUTIONS IN EVENT OF DEFAULT

If at any time it is shown to the satisfaction of the Minister that a local authority have failed to perform any of their duties under the Housing Acts or failed to observe any condition attached to the payment of grants, he may withhold the whole or any part of any contribution which he has undertaken to make to that authority. (Sect. 113.)

## GENERAL POWERS OF MINISTER

POWER OF MINISTER TO PRESCRIBE FORMS AND  
DISPENSE WITH ADVERTISEMENTS AND NOTICES

The Minister may by regulations prescribe anything which by this Act is to be prescribed and the form of any notice, advertisement, statement, or other document which is required or authorized to be used under, or for the purposes of, this Act. (Sect. 176.) In accordance with the powers conferred on him by this Section the Minister has made the Housing Act (Form of Orders and Notices) Regulations, 1937.

## THE SMALL DWELLINGS ACQUISITION ACTS

1899 to 1923

The provisions of the Small Dwellings Acquisition Act, 1899, with its amendments, have not been consolidated in the Housing Act, 1936. The law is now contained in the Act of 1899, as amended and extended by the Housing, Town Planning, etc., Act, 1919, Sect. 49, and the Fourth Schedule, the Housing, etc., Act, 1923, Sect. 22, and the Housing Act, 1935, Sect. 92.

The object of these provisions is to authorize local authorities to advance money to assist persons to build or purchase houses in which they intend to reside. The local authorities are county and county borough councils, but any borough or district council may, by resolution, carry out the provisions for their area to the exclusion of the county council, subject, in the case of an area containing a population of less than 10,000, to the consent of the county council. In London, the Common Council of the City of London and the metropolitan borough councils are in the same position as a provincial district council.

The statutory provisions mentioned above apply the following conditions in respect of advances under these Acts—

(1) Advances must only be made in cases where ownership will constitute either a fee simple or a leasehold interest of at least sixty years. The premises must be in good sanitary condition and repair and must be maintained in that condition. The borrower must keep the premises insured against fire. The premises must not be used for the sale of intoxicants.

(2) The limit on the market value of houses in respect of which advances may be made under the Act of 1899 was £400. This was increased to £800 (1919 Act), and to £1200 (1923 Act), but was reduced to £800. (1935 Act). It was again increased to £1500 under the Building Materials and Housing Act, 1945.

(3) The statutory condition requiring the proprietor of a house in respect of which an advance has been made to reside

in the house shall have effect for a period of three years from the date when the advance is made, or the house is completed, but no longer; and compliance with this condition may at any time be dispensed with by the local authority.

(4) The market value is to be ascertained by means of a valuation duly made on behalf of the local authority and the amount of any such advance shall not exceed 90 per cent of the market value as so ascertained.

(5) An advance may be made in respect of a house in course of construction, in which case it may be made by instalments from time to time as the building of the house progresses, so that the total advance does not at any time before the completion of the house exceed 50 per cent of the value of the work done up to that time on the construction, including the value of the site.

(6) The rate of interest must not exceed one-quarter per cent of the rate of interest fixed by the Treasury for housing loans to local authorities.

(7) Under the Act of 1899, Sect. 2 (c), the property in respect of which an advance is made must first be vested in the local authority subject to redemption, which, under the Act of 1919, Sect. 49 (d), may be by receipt under seal in the form of the Fourth Schedule to that Act having the legal effect specified in Part II of that Schedule. The statutory receipt does not require a stamp. (Act 1919, Sect. 49, proviso (l).) This effect is apparently the same as that of the Law of Property Act, 1925.

(8) The Public Works Loan Board may lend money to local authorities to enable them to make these advances. Otherwise, they are empowered to borrow according to the provisions of the Local Government Act, 1933. A list of advances must be compiled and open for inspection. Separate accounts must be kept by local authorities of their transactions under these provisions.

(9) Advances must be repaid over a period of not exceeding 30 years by the instalment or annuity method. The local authority may take possession or order the sale of the house upon default of mortgagor. Possession may be obtained in the county court or by a justice's warrant. In case of sale the proceeds, after the local authority have recovered any amount due to them, including the expenses of the sale, must be paid to the proprietor. If, in default of sale, the local authority take possession, they are not liable to make any payment to the proprietor.

(10) If the rate charge to a local authority exceeds the product of  $1\frac{1}{2}$ d. rate (County Councils  $\frac{3}{4}$ d.) no further advances must be made for five years or until the charge is reduced to that figure.

In 1935 the Minister of Health informed the Hereford Cor-

poration that, in his opinion, the provision of houses for sale by weekly instalments should be left to private enterprise.

The Housing Act, 1936, Sect. 91, contains a similar but distinct code enabling local authorities to make advances to persons or bodies for the purpose of increasing housing accommodation.

### POST-WAR REQUIREMENTS

Prior to the War of 1914-18, there were approximately eight million houses. From 1919 to 1939, nearly four million houses were built, just over one million being built by local authorities with State assistance, and about half-a-million by private enterprise with State assistance. The State assistance amounted to nearly £194,000,000.

With the outbreak of the 1939-45 War, building almost entirely ceased except for housing war workers, including land workers. Added to the banked-up demand through cessation of building there arose the problem of repairing and replacing about 2½ million houses damaged by enemy action. Approximately, 200,000 houses were destroyed by enemy action and 250,000 rendered uninhabitable. It is estimated that from three to four million houses will be required during the ten or twelve years after the war. In 1944 the Minister of Health asked the local authorities to prepare their plans for building during the first post-war year. The 846 local authorities who replied were proposing to build 172,141 houses during that year.

The Government programme provided for the building of 100,000 houses in the first post-war year and 200,000 houses in the second year, in addition to the temporary houses to be built under the Housing (Temporary Accommodation) Act, 1944.

The Minister of Town and Country Planning decides where houses are to be sited. The Minister of Works deals with labour and materials. The Minister of Supply provides housing equipment. The Minister of Health is responsible for building them.

### SCOTLAND

The Housing of the Working Classes in Scotland has been the subject of a separate Royal Commission, which reported in 1917. The problem is peculiarly a national one by reason of the large proportion of the population who live in tenements in the urban areas, and of the poverty of the inhabitants and many of the landlords in the crofter counties. The Housing Acts have been made applicable to Scotland by special legislation.

### NORTHERN IRELAND

The housing problem in Northern Ireland has been the subject of special legislation, which is referred to in the chapter on Northern Ireland.

## CHAPTER XIV

### TOWN AND COUNTRY PLANNING

THE object of a Planning Scheme is to provide that change and development in the area to which it refers shall take place in accordance with a plan which has been prepared in the interests of the community as a whole, industrial and commercial as well as residential, land owners as well as tenants. Thus the plan will promote, so far as reasonable foresight can do so, the future welfare of the inhabitants of the district. (*Ministry of Health Manual*, 1935.) The principal object of a planning scheme should be to provide a plan within which initiative and enterprise, whether private or public, may be exercised to the best advantage. A scheme must above all be practical. (*Ministry of Health Circular Letter*, March, 1933.)

### LEGISLATION

The law was contained primarily in the Housing, Town Planning, etc., Acts, 1909 to 1923, which were consolidated in the Town Planning Act, 1925. This legislation is repealed, and now incorporated in the Town and Country Planning Act, 1932. This Act has now been supplemented by the Minister of Town and Country Planning Act, 1943; Town and Country Planning (Interim Development) Act, 1943; and the Town and Country Planning Act, 1944.

Other Acts which require consideration include: (i) the Lands Clauses Consolidation Act, 1845; (ii) Town Improvement Clauses Act, 1847; (iii) the Public Health Acts; (iv) the Roads Improvement Act, 1925; (v) Part II of the Housing and Town Planning, etc., Acts, 1909 to 1923; and (vi) the Local Government Act, 1929. The pertinent sections of the latter Acts (viz. 5 and 6) have been repealed and are now incorporated in the 1932 Act. The Distribution of Industry Act, 1945; and the Licensing Planning (Temporary Provisions) Acts, 1945 and 1946, must also be considered.

### DEVELOPMENT OF LEGISLATION

Town planning legislation in this country started with Part II of the Housing and Town Planning, etc., Act, 1909, which formed the framework upon which subsequent legislation has been based. The object of this legislation was to enable local authorities to prepare schemes for the development of particular areas in their



locality, and to control that development for the general benefit of the community. The Town Planning portion of the Act was applicable to any borough, urban areas under development or likely to be developed. The approval of the Ministry of Health (then the Local Government Board) was necessary before a local authority could prepare or adopt a scheme.

The Act was amended, and in part repealed, by Part II of the Housing and Town Planning Act, 1919, which, in turn, was amended by the Housing, etc., Act, 1923. The Town Planning sections of the Act of 1919 gave local authorities greater powers and facilitated procedure by doing away with the necessity for the local authority to obtain the approval of the Ministry of Health before preparing or adopting a scheme, although this is now necessary. This Act introduced a new principle by making it the statutory duty of every borough or urban district with a population of more than 20,000 to prepare a scheme and submit it to the Ministry of Health before a certain date, but this was later repealed as stated below. It also enabled local authorities to establish Joint Town Planning Committees.

The Housing (Additional Powers) Act, 1919, made provision for the acquisition of land for the purpose of developing town planning schemes (Sect. 10) and advances for the development of garden cities were authorized by the Housing Act, 1921. (Sect. 7.)

The legislation was then embodied in the Town Planning Act, 1925, being the first Act devoted solely to this subject. It consolidated and advanced previous legislation. The Act did not apply to Scotland or Northern Ireland. It empowered any local authority (London County Council, Borough, Urban District, and Rural District Councils) to prepare and enforce schemes in accordance with the Act, to acquire land by agreement or compulsorily with the approval of the Ministry of Health under certain conditions, pay compensation or claim betterment, and check contraventions of the schemes. They could act jointly with other authorities and delegate powers to a joint committee.

The Act re-imposed the duty on boroughs and urban districts of over 20,000 population of preparing a scheme not later than 1st January, 1929, but extended by the Local Government Act, 1929 to 1934. As the provisions of the Local Government Act, 1929, Sect. 44, have been repealed by the Town and Country Planning Act, 1932, and not re-enacted, there are no longer any compulsory duties on local authorities to prepare schemes. It gave power to the Ministry of Health to require the preparation of a town planning scheme and to adopt or execute on default of a local authority.

The Local Government Act, 1929, enlarged the existing town

planning law to the extent that County Councils were empowered to take part in the preparation and administration of town planning schemes and to be represented on joint town planning committees. The County Councils could become the authorities responsible for the observance and execution of a scheme, either by relinquishment of functions by the local authority or by order of the Ministry.

These provisions are now replaced by the Town and Country Planning Act, 1932.

### STATUTORY RULES, REGULATIONS, AND ORDERS

In addition to the statutory provisions, certain regulations made by the Ministry of Health have the force of law. These include Procedure Regulations and Interim Development Regulations. Consequent upon the passing of the Town and Country Planning Act, 1932, the Town and Country Planning Regulations 1933 (S.R. & O. 74) were issued on the 27 July, 1933. The Ministry of Health also issued Model Clauses in 1935 for use in the Preparation of Draft Schemes. They were amended in 1937 and 1938. The last published edition is dated June, 1939. The Ministry of Town and Country Planning are preparing revision to Model Clauses and new Interim Development Regulations were issued in 1946.

### TOWN AND COUNTRY PLANNING ACT, 1932

The Town and Country Planning Act, 1932, consists of the Town Planning Act, 1925, remodelled and with considerable extensions, together with the town planning sections of the Local Government Act, 1929. The Bill was originally introduced by the then Minister of Health, the Right Hon. Arthur Greenwood, on 22nd March, 1931. It contained many of the proposals contained in the Rural Amenities Bill which the Right Hon. E. Hilton Young had, for two years in succession, introduced on behalf of the Council for the Preservation of Rural England. The Bill was considered at twenty-one meetings of the Standing Committee and had reached the Report Stage in the Commons when the House adjourned in August, 1931. It made no further progress, with the Dissolution in November, 1931.

The Bill was reintroduced by the new Minister of Health (the Right Hon. E. Hilton Young), and was given a Second Reading on the 2nd February, 1932. It was based on the Government Bill of the last Session of the Labour Government, but was considerably modified and amended in Committee. It received a unanimous Third Reading in the House of Commons on 7th June, 1932. It received the Royal Assent on 12th July, 1932.

The Act constitutes a complete code for town and country planning, all previous statutory enactments being repealed thereby and re-enacted with or without amendments. It consists of 58 Sections and 6 Schedules. The Act came into operation on 1st April, 1933, and does not apply to Northern Ireland.

It is an obvious gain that the word "Country" has been introduced into the title of the Act, and, furthermore, that authorization is given to the preparation of schemes—not merely planning schemes. This should remove from the mind of the countryman an apprehension, sometimes expressed, that a planning scheme might involve urbanization of rural land.

### OBJECT OF THE ACT

It is prescribed in the Preamble as "An Act to authorize the making of schemes with respect to the development and planning of land whether urban or rural, and in that connection to repeal and re-enact with amendments the enactments relating to town planning, to provide for the protection of rural amenities and the preservation of buildings and other objects of interest and beauty, to facilitate the acquisition of land for garden cities, and to make other provisions in connection with the matters aforesaid."

The general purpose of the Act is expressed in Sect. 1 of the Act, which provides that—

"A scheme may be made under this Act with respect to *any land whether there are or are not buildings thereon*, with the general object of controlling the development of the land comprised in the areas to which the scheme applies, of securing proper sanitary conditions, amenity and convenience, *and of preserving existing buildings or other objects of architectural, historical or artistic interest and places of natural interest or beauty, and generally of protecting existing amenities, whether in the urban or rural portions of the area.*" (The words printed in italics indicate the principal changes which have been made by this section.)

### ENLARGEMENT OF SCOPE OF TOWN PLANNING SCHEME

The Civil Defence Act, 1939, provides: There shall be included among the general objects for which a scheme may be made under the Town and Country Planning Act, 1932, the object of rendering the whole or any part of the area to which the scheme applies less vulnerable to air-raids, and that Act shall have effect accordingly as if the said object were included among the objects enumerated in Section 1 thereof. (Sect. 70.)

The word "amenity" appears to cover the provision of grass margins for streets, the planting of trees, prohibition of the erection of factories in certain areas, control of advertisements

(now dealt with in Sect. 47 of the Act), and any other matters, some of which are mentioned in the Second Schedule to the Act. "Amenities" mean "pleasant circumstances or features, advantages." (Scrutton, L.J., in *Re Ellis v. Ruislip Northwood U.D.C.* (1920), 1 K.B. 343, cp. 370, J.P. 1920, cp. 284.)

## AUTHORITIES

The Central Authority is the Ministry of Town and Country Planning constituted by the Act of 1943.

The Local Authority for the purpose of the Act—

- (a) The City of London: the Common Council.
- (b) The County of London: the London County Council.
- (c) Elsewhere: the councils of county boroughs and county districts.

The council of any county district may at any time by agreement relinquish in favour of the County Council any of their powers and duties. (Sect. 2.)

Responsible Authority is specified in the scheme by Sect. 11 of the Act, viz.—

- (a) Any one of the following: (i) the local authority within whose district any land to which the scheme applies or any neighbouring land is suitable; or (ii) a County Council; or (iii) a joint body specially constituted; or
- (b) any two or more such authorities as aforesaid.

Where the scheme provides for a joint body being the responsible authority for any of the purposes of the scheme, it shall contain all such provisions as appear to be necessary or desirable in relation to—

- (a) The constitution and incorporation of the joint body; and
- (b) for conferring and imposing powers and duties on them; and
- (c) making provision with respect to the purposes for which and the manner in which they may borrow money; and
- (d) the manner in which their expenses are to be defrayed; and
- (e) may authorize them to co-opt additional members, so, however, that at least three-fourths of the members of the joint body shall be persons who are members of a constituent authority of the joint body. (Sect. 11 (3).)

## APPOINTMENT OF COMMITTEES FOR PURPOSES OF ACT

1. A local authority or a County Council may appoint a committee for any purposes of the Act, and may delegate to the committee, with or without restrictions or conditions, any of their powers, except the power to levy a rate or borrow money.

2. A committee shall consist of such number of persons as the appointing authority think fit, but at least three-fourths of the committees shall be members of the appointing authority. (Sect. 48.)

Joint Committee may be constituted by two or more authorities or County Councils, who may delegate, with or without restrictions to that committee, any powers other than the powers to borrow money or levy a rate. (Sect. 3 (1).)

Sect. 3 (4) enables a Joint Committee to co-opt members who are not members of any constituent authority.

Regional Committees can thus be appointed for regional purposes, and the Minister has power by order to constitute such a committee where not otherwise obtainable. (Sect. 4.)

Sects. 3 and 4 enable a Regional Scheme to be prepared by a Joint Committee, and subsequently more detailed planning, if desired, by the constituent authorities in the form of Supplementary Schemes under Sect. 9.

## PROCEDURE WITH RESPECT TO SCHEMES

**Preparation or Adoption of Schemes.** Sect. 6 (1) provides that schemes may be prepared by—

- (a) a local authority; or
- (b) a joint committee duly authorized; or
- (c) all or any of the owners of the land.

1. Procedure is by resolution of the authority or joint committee, who may decide—

(a) to prepare a scheme with respect to: (i) any land within; or (ii) in the neighbourhood of the district of the authority or, as in the case may be, the districts of the constituent authorities; or

(b) to adopt, with or without modifications, a scheme proposed by all or any of the owners of such land.

2. The resolution shall not take effect unless and until it is approved by the Minister.

The Minister has power to compel an authority to (i) prepare a scheme; or (ii) adopt a scheme which he has prepared. The Minister, in giving his approval, may vary the extent of land to be included in the area to which the resolution is to apply.

The Town and Country (Interim Development) Act, 1943, provides that as from 22nd October, 1943, the whole of England and Wales shall be deemed subject to a resolution to prepare a scheme, i.e. that interim development control extends to the whole country.

The probable effect of the provisions of Sect. 6 of the Act may be to exclude from the operation of schemes both built-up land and that which is in the open country. It is quite impossible to

predict, with any degree of confidence, that the Minister would be able, under the new provisions, to allow action to be taken by a planning authority in time to effect those objects which it will be believed were fundamental to the purpose of the new Act. In the case of open land, for instance, it is very difficult to say that any area, unless so exceptionally remote and secluded as to border on the inaccessible, will remain altogether free from development of some sort in these days of fast motor traffic on roads which now penetrate into the most thinly populated districts, and form, when the fullest allowance is made for all reasonable criticism, the best highway system in the world. In the Thames Valley, along the coasts, and in any cherished inland districts there is ample but painful evidence of the kind of sporadic, haphazard, and unregulated development which appears and spreads when no protection scheme has been formulated in good time. It might be argued that one can be prepared when dangerous symptoms appear, but experience shows that irreparable mischief can be done in the meantime.

The Act facilitates the preparation of a kind of scheme which was already being evolved in several parts of the country with the collaboration of the principal landlords. That is, a scheme which allocates ample land for future building development and town extension, in appropriate situations; and with a view to health, efficiency, and amenity; to minimizing transport; to the economical provision of necessary roads and public services; and to economy in local administration. It provides, at the other extreme, for the permanent preservation of prominent features of the landscape and beautiful buildings or groups of buildings; and safeguards the normal countryside. In between these extremes, by prohibiting building development other than agricultural, except in a very open manner, undisturbing to the rural scene or to rural economies, it provides everywhere for reasonable control of the external appearance of buildings and of advertisements, etc.

#### NOTICES IN RELATION TO THE MAKING OF OR UNDER SCHEMES

Under the Regulations issued by the Ministry notices were at certain stages required to be served upon individual owners, and the referencing of owners was said to involve local authorities in great expense.

The Act, therefore, provides by Sect. 7 for a substituted procedure. This section secures individual notice to the owner at an earlier stage than under the 1925 Act, and enables him to have his name and address registered, free of charge, which saves

the authority the expense and trouble of referencing, as, for the purpose of the initial notices, they are enabled to make use of the names and addresses of the owners and occupiers, as shown in the latest assessments to Income Tax under Schedule A.

### APPROVAL, VALIDITY, VARIATION, AND REVOCATION OF SCHEMES

These are provided for by Sect. 8 and the First Schedule to the Act, 1932, which, in part, reproduce Sect. 2 (2) and Sect. 15 of the 1925 Act.

1. A scheme prepared or adopted by a local authority or joint committee shall require the approval of the Minister, and the Minister may approve any scheme either with or without modifications.

It is provided that, before making any modifications in a scheme, the Minister shall inform the local authority or joint committee, as the case may be, of the modifications which he proposes to make, and shall cause a local inquiry to be held into the matter if within twenty-eight days the local authority or joint committee request him so to do.

2. The provisions of Parts I and II of the First Schedule to the Act shall have effect with respect to the laying of schemes before Parliament, and the validity of schemes and the date on which schemes are to come into operation.

This supersedes Sect. 2 (3) of the Act of 1925, which provided that a town planning scheme, when approved by the Minister, should have effect as if it were enacted in that Act.

The provisions as to the laying of schemes before Parliament are contained in the First Schedule, Part I, of the Act.

This procedure may be appreciated by reference to the Summary given below.

3. A scheme may be varied, or may be revoked, by a subsequent scheme prepared, or adopted and approved in accordance with this Act, and any regulations made thereunder.

4. The Minister shall not make any variation in the scheme unless he is satisfied that it will not involve substantial additional expenditure by any responsible authority under the scheme which objects to variation being made.

This was designed to meet the view of those who felt that precaution should be taken against involving a small authority in heavy expenditure out of proportion to its rateable value.

### CONTENTS OF SCHEME

These are contained in Sect. 10 and the Second Schedule to the Act of 1932.



## PROCEDURE IN THE PREPARATION OF A SCHEME

NOTE. References are to sections of the Act and the Articles of the Regulations dated 13th March, 1933.

- Stage I. Pre-resolution Stage.
- Stage II. Resolution Stage.
- Stage III. Draft Scheme Stage.
- Stage IV. Scheme Stage.
- Stage V. Parliamentary Stage.
- Stage VI. High Court Procedure.

These stages are suggestive only and are not determined by statute, orders, or regulations.

NOTE. R.M. means the Resolution Map. Art. 10 (1).

P.S.M. means the Preliminary Statement Map. Art. 20 (1) (ii).

D.S.M. means the Draft Scheme Map. Art. 12 (3).

S.M. means the Scheme Map. Art. 14 (2).

#### Stage I. Pre-resolution Stage.

1. Consultation with interested local authorities. (Sect. 6 (3) and Arts. 2 and 30 (3).)

2. Consideration of representations made under (a). (Art. 30 (3).)

#### Stage II. Resolution Stage.

1. Sect. 6 (1) and Art. 10 (1), with R.M.

2. Notice of resolution by advertisement. (Art. 10 (2).)

3. Consideration of suggestions received on (1). (Art. 10 (3).)

The Land Charges Act, 1925, Sect. 15 (7), as amended by the Law of Property (Amendment) Act, 1926, Sect. 7, and Schedule, provides that such resolution shall be deemed a restrictive covenant and in future shall be registered as a local land charge.

(In *Re Forsey and Hollebone's Contract* (1927), 2 Ch. 379.)

4. Submission of resolution, etc., to Minister. (Art. 11 (1).)

5. Amended resolution (if considered necessary). (Art. 10 (3).)

6. Local inquiry (if Minister thinks fit). (Art. 11 (3).)

7. Approval or disapproval by Minister. (Sect. 6 (2) and Art. 11 (4).)

8. Notices by advertisement and to occupiers that resolution has taken effect. (Sect. 7 (1) and (2).)

9. Preparation of register of names and addresses. (Sect. 7 (4), (5), and (6).)

NOTE. The procedure of Stage II is now negatived as the result of the Town and Country Planning (Interim Development) Act, 1943 (see *post*).



**Stage III. Draft Scheme Stage, Art. 12, with D.S.M.**

Where a local authority do not proceed by preliminary statement, the following procedure will be observed—

1. Consultation with interested local authorities. (Art. 30 (1).)
2. Consideration of representations received under (2). (Art. 30 (3).)
3. Amendment of Draft Scheme (if considered necessary). (Art. 30 (3).)
4. Notice by advertisement of adoption of Draft Scheme. Adoption of Draft Scheme. (Art. 12.)
- (a) Within twenty-four months of Resolution under Stage 1. (Art. 12 (1).)
- (b) By Special Resolution of Local Authority. (Sect. 8 (1) (i) and Art. 12 (2).)

5. Consideration of objections made under (5). (Art. 13 (2).)

**Stage IV. Scheme Stage. Art. 13 (1) with S.M.**

1. Local authority shall within nine months of Resolution adopting Draft Scheme. (Art. 14 (1).)
2. The scheme shall refer to the Scheme Map. (Art. 14 (2).)
3. The Resolution shall be passed at a meeting of the local authority of which special notice has been given to each member. (Art. 14 (3).)
4. Submission of scheme to Minister within one month. (Sect. 8 (1) and Art. 14 (4).)
5. Notice forthwith by advertisement by local authority of submission of scheme. (Art. 14 (5).)
6. Local inquiry *shall* be held by the Minister (if any objections are outstanding). (Art. 15 (1).)
7. Approval by Minister without modification. (Art. 15 (2).)

**Modification of Scheme by Minister.**

1. Notice by advertisement of intention of Minister to approve subject to modifications. (Art. 16 (1).)
2. The notice shall contain a statement similar to that contained in paragraph 3 of Stage I. (Art. 16 (2).)
3. Objections including local authority, made to proposed modifications. (Art. 16 (2) and (3).)
4. Local inquiry *shall* be held if requested by local authority. (Sect. 8 (1) (ii) and Art. 16 (4).)
5. Approval of scheme by Minister with or without modification. (Art. 17.)
6. Notice by advertisement of approval by Minister. (Art. 18 (1).)
7. If Minister disapproves, then notice thereof by advertisement. (Art. 18 (2).)

**Stage V. Parliamentary Stage.**

1. Approval by resolutions in both Houses of Parliament (where necessary). Sect. 8 and First Schedule, par. 1 and 2.
2. Notice by advertisement that scheme is capable of coming into operation. First Schedule, Part II, par. 1, and Art. 19.

**Stage VI. High Court Procedure.**

1. Scheme may be challenged in the High Court during six weeks after advertisement referred to in Stage V.
2. If not challenged, scheme comes into operation at end of this period.
3. If scheme is challenged, then subject to decision of Court. (Part III of First Schedule to the Act, pars. 2 and 4.)

**Optional Stage. Preparation of Preliminary Statement of Proposals.** (Art. 20 (1).) With P.S.M.

NOTE that a Draft Scheme is prepared in any case, but in less time. (Art. 20 (2).)

1. The local authority must prepare and adopt the Statement by resolution, within fifteen months of above Resolution. (Art. 20 (1) (i).)
2. The Preliminary statement shall include particulars of the matters specified in the Third Schedule to the Regulations. (Art. 20 (1) (ii).)
3. Certified copy of draft Preliminary Statement to interested local authorities. (Art. 30 (2).)
4. Consideration of representations received under (1) and shall make such modifications of draft Preliminary Statement as may appear desirable. (Art. 30 (3).)
5. Notice of intention to adopt Preliminary Statement. Not earlier than three months from Notices under Sect. 7 (1). (Art. 20 (1) (iii).)
6. Consideration by local authority of representations received under (4). (Art. 20 (1) (iv).)
7. Submission of Preliminary Statement by local authority to Minister. (Art. 20 (1) (vi).)
8. Notice by advertisement to be given by local authority. (Art. 20 (1) (vi).)
9. Local inquiry (if Minister thinks fit). (Art. 20 (1) (vii).)
10. Approval or disapproval of Preliminary Statement by Minister with or without modifications. (Art. 20 (1) (viii).)
11. Notice by advertisement of approval or disapproval of Preliminary Statement. (Art. 20 (1) (ix).)

**MODEL CLAUSES**

Model Clauses to meet the requirements of the Town and

Country Planning Act, 1932, were finally approved by the Advisory Committee in 1935. They were revised in 1937 and 1938. The latest edition is dated June, 1939. They are divided into eight Parts as follows—

- Part I. General.
  - Part II. Reservation of Lands.
  - Part III. Streets and Building Lines.
  - Part IV. Building Restrictions and Use of Land.
  - Part V. General Amenity and Convenience.
  - Part VI. Maintenance, Use, Alteration, Extension, and Replacement of Existing Buildings and Continuance of Existing Use of Land.
  - Part VII. Plans, Approvals, Appeals.
  - Part VIII. Miscellaneous.
- There are seven Schedules and two Appendices.

The Model Clauses are dealt with fully in *The Law of Housing and Planning* (Pitman).

#### SUPPLEMENTARY SCHEMES FOR AREAS COMPRISED IN REGIONAL SCHEMES

Supplementary schemes may be made by the local authority or joint committee for local matters. (Sect. 9.)

1. Where a regional scheme made by a joint committee is in operation any local authority or joint committee may by resolution decide to prepare a supplementary scheme with respect to any land to which the regional scheme applies.

2. The Supplementary scheme shall incorporate with or without modification all such provisions of the regional scheme as related to the area, and may include such additional provisions as appear to be necessary or desirable.

3. A resolution to prepare or adopt a supplementary scheme shall not affect the operation of the regional scheme, but as from the date on which the supplementary scheme comes into operation it shall, so far as respects the area to which it applies, have the effect of revoking the regional scheme. (This is necessary in order to ensure that the statutory schemes shall not apply concurrently to the same area.)

4. In this section the expression "Regional Scheme" means a scheme made by a Joint Committee.

The machinery for Regional Planning by Joint Committees remains much as it was, but it is of interest that the term "Regional Scheme" has now been introduced into an Act of Parliament. It will now be possible first to prepare and bring into operation a statutory regional scheme, which would presumably

be of an outline or framework character; and afterwards to supplement it or fill in the framework so far as necessary with local schemes dealing with more purely local matters.

The need of Regional Schemes is essential and the importance of the active co-operation of County Councils is desirable.

The power under the new Act to take measures for preserving rural amenities is evident. Schemes for rural areas, where urban development on a large scale is not likely, may be expected to be directed chiefly to protecting these amenities, to securing group instead of scattered development, and in dealing with development in areas where insanitary conditions might arise or where the cost of providing necessary public services might be prohibitive.

Sect. 9 makes it quite clear that the operation of the Regional Scheme and the powers of the Regional Authority will not be affected by a resolution to prepare a Supplementary Scheme, but, as soon as the latter comes into force, and "so far as respects the area to which it applies," it shall have the effect of revoking the Regional Scheme. The main features of a Regional Scheme can be given statutory recognition without undue delay; and this outline plan should prove a most useful guide to local authorities in the preparation of their more detailed Supplementary Schemes.

### INTERIM DEVELOPMENT

Interim development means development between the date on which the resolution takes effect and the date of the coming into operation of the scheme. (Sect. 10.)

The Town and Country Planning (Interim Development) Act, 1943, provides that the whole of England and Wales shall be deemed to be subject to Interim Development as from 22nd October, 1943. (Sect. 1.)

### ENFORCEMENT OF SCHEMES

The power to enforce and carry schemes into effect is given by Sect. 13 of the Act.

Power is given to postpone consideration of any Interim Development application unless the applicant shows that the proposed development would be carried out immediately. (Sect. 2.)

### COMPENSATION

Sect. 18 re-enacts and amplifies the provisions of Sect. 10 (1) and (6) of the Act of 1925. Whilst the general provisions of the existing law as to the circumstances in which compensation may be claimed are retained, additional powers are given

to the Minister of Health to declare the provisions of a scheme reasonable, so as to exclude the right to claim compensation. There are cases where forms of development should be prohibited or brought under control in the public interest.

The principal new features are—

1. Provision for expenditure rendered abortive by a subsequent variation;
2. Specific reference to injury to trade, business, or profession; and
3. Allowance for additional injurious affection due to refusal of an appeal under an Interim Development Order, or conditions imposed by the Minister on the grant of such an application.

### POWER OF MINISTER TO EXCLUDE COMPENSATION IN CERTAIN CASES

Sect. 19 is similar to Sects. 10 (2) and 11 of the 1925 Act, with modifications and some additions.

Sect. 19 continues the removal from the field of compensation of reasonable regulations respecting certain matters enumerated in the section. It appears to say, in effect, that a scheme may provide that there shall be no liability to pay compensation in respect of a provision—

(a) which permanently prohibits or restricts building operations on the ground that: (i) by reason of the situation or nature of the land, the erection of buildings thereon would be likely to involve danger or injury to health; or (ii) excessive expenditure of public money in the provision of roads, sewers, water supply, or other public services;

(b) if it can be clearly established that the prohibition or restriction is proper and reasonable and expedient having regard to the local circumstances.

### EXCLUSION OR LIMITATION OF COMPENSATION IN CERTAIN OTHER CASES

Subsecs. (1) and (3) of Sect. 20 in effect repeat and clarify Sect. 11 (1) of the Town Planning Act, 1925.

1. No compensation shall be payable under this Act in respect of any property on the ground that it has been injuriously affected by any provision contained in a scheme, if and in so far as the same provision or a provision substantially to the same effect was, at the date when the scheme came into operation, already in force by virtue of some Act, not being either this Act or an Act repealed by this Act.

2. No compensation shall be payable under this Act in respect of any action taken by a responsible authority to enforce and

carry into effect schemes, as provided by Sect. 13, except in a case where a building or work which the authority have removed, pulled down or altered, was an existing building or an existing work, or a use of a building or land which they have prohibited was an existing use.

### RECOVERY OF BETTERMENT FROM OWNERS OF PROPERTY INCREASED IN VALUE

Sect. 21 (1) in effect repeats Sect. 10 (3) of the Act of 1925, but it raises the amount of betterment claimable from 50 per cent to 75 per cent. New provisos are made for deferring the recovery of betterment as long as the property in question remains agricultural, or, except in the case of business or industrial property, until the property is disposed of or there is a change in use (other than from one form of agriculture to another).

### MAKING OF CLAIMS FOR COMPENSATION OR BETTERMENT

Sect. 22, relating to the time for making of claims for compensation or betterment, amplifies Sect. 10 (1) and (3) of the Act of 1925. Claims must be made within twelve months of the coming into operation of the action giving rise to the right to compensation or betterment.

An owner may give notice requiring a claim for betterment to be deferred unless he has made a claim for compensation to an amount not less than the claim for betterment and the claim for compensation is not in respect of injurious affection immediately suffered.

A new claim may be made in three instances—

(1) When the property is disposed of within 14 years from the notice to defer. The local authority must be notified and furnished with particulars reasonably required. The new claim must be made within 12 months of such notice.

(2) When the use of the property is changed within 14 years from the notice to defer. Agricultural use is excepted. The provisions with regard to notice and claim are the same as on disposition.

(3) When the user is for business or industry after 5 years from the original notice.

Betterment may be claimed under the Town Planning Act, 1925, in respect of land outside the area of a town planning scheme. Where land is declared to be a street under a town planning scheme, any increase in value is due to the making of the scheme and creates a claim for betterment. In such a case, time runs from the notice making the declaration, and not from the making of the scheme. (*R. v. Webster ex parte Young*, 1935, 33 L.G.R. 5 (Div. Ct).)

## DETERMINATION OF CLAIMS AND RECOVERY OF AMOUNTS DUE

By the Acquisition of Land (Assessment of Compensation) Act, 1919, where land is authorized by statute to be acquired compulsorily by a Government Department or local authority, any question of disputed compensation is to be referred to the arbitration of a single arbitrator from the panel of the official arbitrators appointed in accordance with the rules made by the Reference Committee. Sect. 23 of the 1932 Act incorporates Sect. 10 (4) of the Act of 1925.

The case of *Postmaster-General v. Birmingham Corporation*, [1935] 1 K.B. 404 and [1936] 1 K.B. 66; and 153 L.T. 405, dealt with the liability for the cost of removal of telegraph posts due to the operation of a street widening order under a town planning scheme. The Telegraph Act, 1863, Sect. 15, empowers the body having control of the street to require the Company (now the Postmaster General) to remove posts and bear the cost thereof. The Telegraph Act, 1878, Sect. 7, empowers the Postmaster-General to recover the cost of removing posts where the removal is authorized by an Act of Parliament and no other provision is made therefor. It was agreed that an order duly confirmed was equivalent to the authority of an Act of Parliament. As the Corporation had control of the street the Court of Appeal held that the Postmaster General was liable for the cost. The difficulty that a local authority not having the control of the street would be faced with should be noticed.

## POWER TO WITHDRAW OR MODIFY PROVISIONS OF SCHEME AFTER AWARD OF COMPENSATION

Sect. 24 is similar to Sect. 12 of the 1925 Act. The responsible authority may, at any time within one month after the date of an award of compensation under this Act in respect of the injurious affection of any property, give notice to the claimant of their intentions to withdraw or modify all or any of the provisions of the scheme which give rise to his claim for compensation.

## PURCHASE OF LAND

**Acquisition of Land to which Scheme Applies.** Sect. 25 replaces Sect. 8 of the Act of 1925. The important difference from that section is the expressed authority for the acquisition of land in the cases described in paragraphs (a), (b), (c), and (d) of sub-sec. (1).

## APPEALS

There are various provisions as to appeals and these are set

out in the Schedule to *The Law of Housing and Planning* (Pitman), to which reference should be made for further details.

### ADVERTISEMENTS

The provisions of the Town and Country Planning (Interim Development) Act, 1943, do not empower an interim development authority to prohibit the use of a wall of a lease for advertising in a case not within Sect. 47 of the Town and Country Planning Act, 1932.

Sect. 47 (8) of the 1932 Act prohibits the inclusion in a scheme, save as provided by the Section, of any provision prohibiting or controlling the erection or use of any structures for the purpose of advertising. This was not affected by the Act of 1943, and an interim scheme must therefore not contain any prohibition of the use of structures for advertising. (*Mills & Rockley's, Limited v. Leicester City Council* (1946) W.N. 48.)

### PROPOSALS FOR REFORM

During the past few years three Reports of outstanding interest have been published. These are the Report of the Royal Commission on the Distribution of the Industrial Population (Barlow Report), published in 1940; the Report of the Departmental Committee on the Utilization of Land in Rural Areas (Scott Report), published in 1942; and the Final Report of the Expert Committee on Compensation and Betterment (Uthwatt Report), also published in 1942. The recommendations will be considered briefly.

**Montague-Barlow Report.** The Royal Commission on the Geographical Distribution of the Industrial Population, under the chairmanship of Sir Montague-Barlow, which sat from 1937 to 1939, took exhaustive evidence and reported in 1940 in favour of a national policy of planning. The basis of the Report was the decentralization of industry and population from the larger cities, especially London, the redevelopment of their centres at lower density, and a balanced redistribution of industry and population in the under-populated regions and in new towns and extensions of country towns. To achieve such an object, restriction and guidance of the location of industry were recommended, and the Commission proposed national action and the setting up of central machinery for national planning. The creation of the Ministry of Town and Country Planning followed, after several interim expedients. The main policy recommendations have not yet been adopted by the Government; but see New Towns Act, 1946, page 396.



**Scott Report.** The Departmental Committee on the Utilization of Land in Rural Areas was set up in 1941, under the chairmanship of Sir Leslie Scott, to consider whether a policy of decentralization of large cities should be carried out in such a way as not to injure agriculture or the amenities of the countryside. Accepting the Barlow thesis relative to the location of industry, the Scott Committee, which reported in 1942, recommended that new developments necessitated by industrial decentralization should be grouped as far as possible in some of the existing towns. These should not be too large to take further development. New planned towns should be developed by avoiding sprawl and ribbon development and the utilization for building of the best agricultural soils. A five years' scheme of compulsory planning was recommended. Green belts should be developed between towns. Rural houses should be reconditioned to modern standards. Utilities such as gas, electricity, and water should be brought under national control.

**Uthwatt Report.** The Final Report of the Expert (Uthwatt) Committee on Compensation and Betterment was published in 1942. It analysed very thoroughly the Barlow recommendations for decentralization, the policy of preventing the sprawl of cities, and the redevelopment of bombed areas, involving important problems of land tenure and compensation. It appreciated that if central areas of cities were to be reduced in density by the moving out of some of their industry and population, claims to compensation for reduced density or less remunerative use of sites would arise. Secondly, the preservation of agricultural land and green belts from building under the new conception of planning would also reduce values of prospective building land outside the cities. Thirdly, the replanning of congested areas was very difficult where these areas were in many different ownerships. The Report recommended—

1. To deal with the problem of *rural preservation*: the acquisition of development rights of all undeveloped land outside built-up areas by the State on a "global" (or one-sum) compensation basis;
2. To deal with the problem of *reducing density* in built-up areas by the exercise of compulsory purchase rights; a system of amended rules for compensation, coupled with a Periodic Levy on the annual value of any land benefiting by increased development, or showing an increase of value for any reason. (It was found impossible to discriminate between reasons for increases of value.)
3. To deal with the problem of *diverse ownerships*: a facilitated acquisition by local authorities of reconstruction areas needing replanning.

4. *To avoid inflation of land prices*: compensation for all purposes, whether acquisition or the effects of planning, to be limited to the value at 31st March, 1939. Though many object to it, many others consider there is a case for some adjustment for the changed value of money.

5. *To facilitate replanning of built-up areas*: a limit of useful "life" to be placed on old buildings, and compensation to take account of the unexpired "life" only. This is a matter of major importance in view of the fact that we are entering an era of "replacement housing."

6. The setting up of a Central Planning Authority, with power to exclude compensation in any cases.

7. Land purchased by a public authority should not be resold. Control to be exercised by means of covenants.

So far only recommendations 3, 4, and 6 mentioned above have been accepted, 3 being merely an evolutionary extension of existing powers. Legislation on these recommendations is expected in the near future. These three recommendations, while valuable, do not in any way deal with the major national planning problems. On the contrary, in conjunction with the Ministry of Health one-year housing programme, they facilitate the recommencement of development of cities at greater speed, on 1939 assumptions as to growth.

### THE TOWN AND COUNTRY PLANNING ACT, 1944

This Act provides a more simple and expeditious method for the compulsory purchase of land for planning. It will assist in a better use being made of land upon sale or development thereof. Exchequer grants are provided to assist in the redevelopment of war damaged land. These are dealt with in Chapter XXVI. For a period of five years the basis of payment of compensation for the public acquisition of land for any purpose will be the value thereof at the 31st March, 1939, except that an addition of 30 (now 60) per cent may be made in respect of owner-occupier premises under £75 annual value and the cost of improvements under-taken before service of notice to treat may be added.

The Act in this respect is based upon the findings of the Report of the Expert (Uthwatt) Committee on Compensation and Betterment, 1942. White Paper on *The Control of Land Use* (Cmd. 6537) sets out the Government's proposals which were embodied in this legislation. The Act deals differently with "blitzed" areas (extensive war damage), "blighted" areas (bad layout and obsolete development) and "overspill" areas (industry and population accommodated from blitzed and blighted areas). In the case of blitzed areas, associated overspill areas adjacent

land and replacement of open spaces from those areas a new method of compulsory purchase is provided for a period of five years, consisting of obtaining a Declaratory Order from the Minister of Town and Country Planning. The great advantage of the Order is that any objections can be dealt with at an early stage and not hold up the compulsory purchase. The method of compulsory purchase of land for other planning purposes is simplified. The Act is an amending Statute to be considered in conjunction with the Town and Country Planning Act, 1932, and the Town and Country Planning (Interim Development) Act, 1943.

### **DISTRIBUTION OF INDUSTRY ACT, 1945**

This Act is based on the Recommendations of the Report of the (Barlow) Royal Commission on the Geographical Distribution of the Industrial Population, 1942. It provides for the transfer to the Board of Trade of the powers of the Commissioners of Special Areas. Areas known originally as "distressed" and later as "special" are renamed "development" areas by this Act. The First Schedule to the Act sets out the original development areas but the President of the Board of Trade is empowered to create other places "development areas" as was done in South West Lancashire (Wigan and St. Helens) and Wrexham in 1946.

The Board of Trade may acquire land for the provision of industrial premises in development areas, if necessary, compulsorily. With the consent of the Treasury, any Minister may make grants or loans for the improvement of basic services in a development area. The Treasury may also make grants or loans to industrialists in such areas. The Board of Trade may prohibit the establishment of industries in certain prescribed areas.

### **LICENSING PLANNING (TEMPORARY PROVISIONS) ACTS, 1945 and 1946**

The Acts are designed for temporary reconstruction purposes with regard to the supply of places of refreshment connected with the replanning of "blitzed" cities and towns.

### **NEW TOWNS ACT, 1946**

This Act proposes to set up Development Corporations to be financed out of the Consolidated Fund. The Minister of Town and Country Planning will designate areas as sites of new towns.

### **TOWN AND COUNTRY PLANNING BILL, 1947.**

Based principally on the Uthwatt Report this Bill was published too late for this Edition.

## CHAPTER XV

### THE ADOPTIVE AND AGRICULTURAL ACTS

THE Adoptive Acts constitute a form of tentative legislation and are examples of permissive Local Government legislation. These Acts are concessions to a reluctance on the part of Parliament to legislate for a locality without its consent. At the same time they enable progressive and enlightened localities to proceed with schemes for the social, material, and moral improvement of the district, with the minimum of inconvenience and expense.

The Local Government Act, 1933, Sect. 305, defines "The Adoptive Acts" to mean—

- (a) The Lighting and Watching Act, 1833;
- (b) The Baths and Washhouses Acts, 1846 to 1925;
- (c) The Burial Acts, 1852 to 1906;
- (d) The Public Improvements Act, 1860; and
- (e) The Public Libraries Acts, 1892 to 1919.

The Baths and Washhouses Acts, 1846 to 1925, have since been incorporated in the Public Health Act, 1936. (See Chapter XII.) The provisions no longer require formal adoption, but are considered as Adoptive Acts for purposes of the limitations on the expenses of parish councils and meetings.

For purposes of consideration the legislation may be said to include other Acts of Parliament, which may be divided into two classes, viz. *Sanitary Adoptive Acts*, which may be adopted by any sanitary authority, viz. Rural District, Urban District Council or Borough Council; and *Parochial Adoptive Acts*, which may be operated by any Parish Council (if adopted by the Parish Meeting), and by any Urban District Council or Borough Council.

### SANITARY ADOPTIVE ACTS

One of the results of the complete consolidation of the Public Health Acts as described in Chapter XII will be that ultimately most of this legislation will be incorporated in legislation which will be optional without adoption or obligatory.

The Sanitary Adoptive Acts constitute the permissive legislation of Local Government for sanitary purposes.

The Public Health Acts (Interments) Act, 1879, provides that urban or rural sanitary authorities may provide and maintain cemeteries. The Minister of Health has power to compel a sanitary authority to provide a cemetery. (See section on The Burial Authority.)

The Public Health Acts Amendment Act, 1890, is divided into five Parts, viz.: Part I, General, has reference to the adoption of the Act, expenses and legal proceedings of local authorities, and appeals; Part II, Telegraph, etc., Wires, provides for by-laws for prevention of danger from telegraph wires, etc.; Part III, Sanitary, is dealt with in Chapter XI; Part IV, Music and Dancing, makes provision for music and dancing licences; Part V, Stock, is repealed by the Local Government Act, 1933.

Part III only is adoptive by any rural sanitary authority. Parts II to V may be adopted by any urban sanitary authority.

The Museum and Gymnasium Act, 1891, gave power to urban sanitary authorities to provide and maintain museums and gymnasia. The Libraries Act, 1919, abolished the limitation as to rates and provided that Museum and Gymnasium expenses should be chargeable on the General Rate Fund. The 1891 Act was repealed by the Physical Training and Recreation Act, 1937.

The Private Street Works Act, 1892, provides facilities for the recovery from the owner, under certain circumstances, of expenses of making up streets. (See Chapter XVIII.)

The Open Spaces Act, 1906, gives power to local authorities to take over, from Trustees or Corporations (other than municipal Corporations) sanctioned by local Acts, open spaces and burial grounds, including disused burial grounds. The Act defines an open space as "any land whether enclosed or not, on which there are no buildings, or of which not more than one-twentieth part is covered with buildings, and the whole of the remainder of which is laid out as a garden, or is used for purposes of recreation or lies waste and unoccupied." Local authorities may acquire and maintain open spaces or burial grounds, and may make by-laws for the regulation thereof. These powers may readily be used in connection with the recreational facilities under the Education Act, 1944.

Where a disused burial ground is dedicated as an open space under the Open Spaces Act, 1906, the county council cannot take a strip for road widening since they are bound by a statutory trust. (*Ex Parte West Riding C.C.*, 1936, 52 T.L.R. 111.)

The Public Health Acts Amendment Act, 1907, and the Public Health Act, 1925, are adoptive Acts, but they have been repealed to a large extent by the Public Health Act, 1936.

These Acts are dealt with in Chapter XII.

## PAROCHIAL ADOPTIVE ACTS

The Parochial Adoptive Acts include the following—

The Lighting and Watching Act, 1833, enables a parish to provide or enter into contracts for lighting the roads, streets,

etc., with lamps. There is no authority to supply power. It is adopted by a two-thirds majority of a Parish Meeting. If there is no Parish Council within the parish the Act may be put into operation by "Inspectors," elected by a majority of the rate-payers of the whole or part of a parish. The "Watching" powers, are superseded by the modern Police and Fire Brigades Acts referred to in Chapter XVII. Where the Act is in force the rating authority is empowered to levy lighting expenses as a special rate over the lighting district. The rate is levied as an additional item of the General Rate.

The Burial Acts, 1852 to 1906, and the Public Health (Interments) Act, 1879, are referred to on page 407.

The Public Improvement Act, 1860, makes provision for public walks and playgrounds (recreation grounds), the improving of any existing walk or footpath, and the providing of shelters and seats. The Act may be adopted by any parish with a population of 500 at the last census, by a two-thirds vote in the Parish Meeting. A copy of the resolution adopting the Act must be sent to the Ministry of Health. The council is limited to an expense under this Act equal to a rate of eightpence in the £. One-half of the expenses must be provided from sources other than the rates.

The Public Libraries Acts, 1892 to 1919, provide that in rural areas any ten electors may demand a poll by ballot of the electors, on the result of which, by a bare majority, reference and lending library and museum must be provided. Two parishes may agree to share in the provision of a free library managed by a Joint Committee. In urban areas, a resolution of the local authority is sufficient for the adoption of the Acts. (1893 Act.) By the Public Libraries Act, 1919, the limitation as to a maximum expenditure equal to a penny rate is done away with, and any borough or district within the county which does not already possess a public library may require the County Council to provide one. The local authority may borrow money for the purpose of these Acts with the consent of the Ministry of Health. Loans are repayable in 60 years. Outside County Boroughs, the County Council, acting through the Education Committee, is the library authority for all *new* adoptions of the Acts. The existing authorities may delegate their powers to their Education Committee. The power of levying or issuing a precept for a rate, or of borrowing money may not be delegated.

The War Memorials (Local Authorities Powers) Act, 1923, enables local authorities to incur reasonable expenditure in the maintenance, repair, and protection of any War Memorials within their district which may be vested in them. Any expenditure

to be incurred under the Act by a local authority is limited to an amount from time to time approved by the Minister of Health.

### AGRICULTURAL ACTS

Very intimately identified with this subject are the Agricultural Acts, which include those relating to—

- (a) Small Holdings and Allotments.
- (b) Land Settlements.
- (c) Land Drainage.
- (d) Agricultural Credits.

The Small Holdings and Allotments Acts, 1908 to 1926, and the Land Settlement (Facilities) Act, 1919, enact that allotments must be provided for the population by the Borough or Urban District Council, or, in rural districts, by the Parish Council. Land for allotments may be bought or hired compulsorily by means of a Compulsory Purchase Order made by the County Council and confirmed by the Ministry of Agriculture and Fisheries.

A SMALL HOLDING is one which either exceeds one acre but does not exceed 50 acres in extent, or, where it exceeds the latter area, is not assessed for income tax beyond £100 annual value. The administration of small holdings is under the central control of Small Holdings Commissioners of the Ministry of Agriculture and Fisheries and under the local control of the County Council, through the Small Holdings Sub-Committee of the Agricultural Committee. Part III of the Ministry of Agriculture and Fisheries Act, 1919, deals with the establishment of County Agricultural Committees. The appointment of such committees is compulsory on every County Council (other than the London County Council), but is optional in the case of County Borough Councils and the London County Council. A committee may consist partly of persons who are not members of the council. Considerable powers may be delegated to these committees with respect to agriculture, including the powers of the council under the Destructive Insects and Pests Acts of 1877 and 1907; Diseases of Animals Acts, 1894 to 1935; Fertilizers and Feeding Stuffs Act, 1900; and Small Holdings and Allotments Acts.

On the application of the council, the Ministry of Agriculture and Fisheries, after consultation with the Ministry of Education, may issue an Order directing that any matter specified in the Order and relating to agricultural education, which, but for this provision, would stand referred to the Education Committee, shall stand referred to the Agricultural Committee.

The Ministry may authorize an Agricultural Committee or a Sub-Committee thereof to exercise, on behalf of the Ministry, any of the powers of the Ministry under the provisions of Part



IV of the Corn Production Act, 1917, or any powers of the Ministry in relation to land acquired by them under the Small Holdings Colonies Acts, 1916 and 1918.

The Agricultural Committee must appoint a Small Holdings and Allotments Sub-Committee and a Diseases of Animals Sub-Committee, which shall act respectively as the Small Holdings and Allotments Committee (required to be established under the Small Holdings and Allotments Act, 1908), and as the Executive Committee appointed under the Diseases of Animals Act, 1894. Any power of the County Council or County Borough Council exercisable under the Small Holdings and Allotments Act, 1908, or any Act amending the same (except the power to levy a rate or raise a loan), shall be exercised by the Sub-Committee so appointed. The net expenses of the County Council for administration must not exceed a rate of  $1\frac{1}{3}$ d. in the £. The Ministry make grants for pre-1926 schemes up to the total annual *capital* loss, and for post-1926 schemes up to 75 per cent of the total annual *capital* loss. Loans may be for a period of eighty years.

AN ALLOTMENT may not exceed an area of five acres. Allotments may be provided by the council of any borough, urban district, or parish. Any six registered Parliamentary electors or rate-payers may make representations to the council, whereupon it is the duty of the County Council to ascertain the extent of this demand. The essential difference, apart from size limitation, between an allotment and a small holding in a rural district is that the former is obtained by the Parish Council and the latter by the County Council. Elsewhere the essential difference lies in the part of the Act under which the land is acquired.

The Allotments Act, 1922, provides that allotment-holders cannot be dispossessed and their tenancies terminated except by a six months' notice expiring on or before 6th April, or on or after 29th September, or, where the land is required for building or similar purposes, by a three months' previous notice. The council of every borough or urban district with a population of 10,000 or upwards must set up an Allotments Committee, upon which representatives of the allotment-holders must be appointed.

The Allotments Act, 1925, is largely concerned with providing facilities for the acquisition and maintenance of allotments, by empowering local authorities to borrow money from the Public Works Loan Board. Where allotments are taken over for some other public purpose, the local authorities are called upon to provide alternative land. It enacts that an Allotments Committee must be appointed where the total number of allotments



provided by the council of a borough or urban district exceeds four hundred, and irrespective of population.

The *Agricultural Returns Act, 1925*, enables the Ministry of Agriculture and Fisheries to collect facts in relation to agriculture from the occupiers or managers of agricultural land. Both are required to give returns of acreage of cultivated land, specifying the various crops and the amount of fallow or grazing land.

The *Small Holding Colonies Acts, 1916 and 1918*, provide that the Ministry of Agriculture and Fisheries, for the purposes of the acquisition, equipment, and settlement of the area authorized to be acquired within any county, may, with the consent of the council of that county, employ that council as its agent and vest in it all or any of its powers in addition to those vested in such council by virtue of the *Small Holdings and Allotments Act, 1908*.

The *Land Drainage Act, 1918*, was repealed by the *Land Drainage Act, 1930*.

### THE LAND DRAINAGE ACT, 1930

The *Land Drainage Act, 1930*, is the outcome of the findings of the Commission.

*The chief objects* of the Act may be stated as follows, viz.—

1. Consolidation of Land Drainage legislation.
2. Reform of areas and authorities to provide (a) More uniform administration, (b) Larger main drainage areas, (c) A wider basis of chargeability.
3. Adjustments of incidence of rates between (a) Uplands and lowlands, (b) Agricultural and other interests, (c) Owners and occupiers.

The promoters of the statute are satisfied that it marks the beginning of a new era in the history of land drainage law.

The *Local Authorities* under the Act are Drainage Boards, which may be—

1. CATCHMENT BOARDS for new catchment areas.

Catchment Areas are—

(a) the areas specified in Part I of the First Schedule to the *Land Drainage Act, 1930*; and

(b) any areas added to the said Schedule by the Minister of Agriculture and Fisheries in accordance with the provisions of the 1930 Act, Sect. 2 (2).

2. INTERNAL DRAINAGE BOARDS for drainage districts within catchment areas. These may be existing Boards within the catchment area or new Boards constituted under the scheme of reorganization which each Catchment Board has been required to prepare.

3. DRAINAGE BOARDS for districts outside catchment areas. The Drainage Boards may be existing Boards or newly established by order of the Minister of Agriculture and Fisheries. A County Borough Council may petition for such an order, but in the event of the petition being refused the council would have to bear the expense.

*The Catchment Boards* are newly established authorities set up for catchment areas for purposes of *Main Drainage*. They have full control of the banks and channel of the *main* river and also work in close collaboration with the Internal Boards. Certain areas are specified in the first schedule as catchment areas, and the Minister is empowered, upon application of a County or County Borough Council, or as he thinks fit, to dissolve, regroup, or constitute new catchment areas.

Although a person whose land is flooded cannot recover damages from the Catchment Board for that area for failure to repair the drainage works, the Board not being under an imperative duty, but having merely a permissive power under the Land Drainage Act, 1930, Sect. 34, to repair a breach in the drainage work, if in fact the Board undertook the work of repairing a breach in a river wall and did it negligently, damage can be recovered for the injury to the land.

The Board, though not liable for nonfeasance, was liable for misfeasance. (*Kent and Porter v. East Suffolk Rivers Catchment Board* (1939), 2 All E.R. 207.)

The functions of *Internal Drainage Boards* (i.e. Boards for subdivisions of the catchment area) will be the construction, maintenance, and improvement of watercourses and the outfall of water, or any defence against water.

The County or County Borough Council is empowered to make application to the Catchment Board for the transfer to them of the Internal Drainage Board's functions if it is in default.

The County and County Borough Council will also possess all the powers of a Board with regard to the enforcement of repairs to watercourses and the removal of obstructions.

For "small areas" the council will be empowered to acquire all the functions of a Board. The "small area" is defined as one where the only works required would be of a minor nature, i.e. not exceeding £5 per acre, or £5,000 in all.

In *Smith v. Cavdle Fen, Ely (Cambridge) Commissioners*, [1938] 4 All E.R. 64, the plaintiff's lands were in 1937 severely damaged by reason of floods. It was alleged that the damage was due to the failure of the defendants to keep in good repair the drainage works within their area. The main and substantial cause of the flooding was that a bank was too low. It was found

that the dykes were kept reasonably clean and that the pumping system was as efficient as the defendants could make it, having regard to the funds at their disposal. The action failed, because the defendants were not under a statutory duty to execute the repairs which, it was alleged, they had failed to execute.

**Financial Provisions.** The principle of land drainage chargeability in the past has been one of "benefit." These provisions depart from that principle by raising contributions from the extended area of the catchment authority. The case of *Gibbons v. Lenfestey*, 1915, 84 L.J. P.C. 158, decided that upland has a dominant easement over lower land entitling the owner to drainage by gravitation. As catchment areas include upland and lowland districts, the former will bear some share of the cost of drainage. The catchment area also includes other land which has previously been free from liability, such as land in urban districts where the properties are residential, commercial, and industrial, and where *ipso facto* there is no necessity for land drainage in addition to drainage and sewerage. The importance of these points will be seen in the following description of the financial provisions. The principle of "benefit" will be preserved to the extent of the operation of the differential rating in favour of non-agricultural hereditaments.

The Catchment Boards obtain their income from—

1. Contributions levied on internal Boards *as the Catchment Board consider fair.*

2. Amounts apportioned on County and County Borough Councils on the basis of the aggregate rateable values of all the hereditaments of the areas of those councils which are *situated in the catchment area.*

The following powers of expenditure are given to Catchment Boards, viz.—

1. Arterial and main drainage.

- (a) Execution of works.

- (b) Acquisition of land and properties.

2. Supervision of Internal Boards.

3. Contributions to Boards for low-lying land and deferred benefits.

4. Promotion of, and opposition to, parliamentary bills and orders and schemes of organization.

5. Schemes for variation of awards.

6. General administration expenses.

The Catchment Boards levy precepts upon the councils for their proportion of expenses which may be raised as an additional

item of the general rate *on the part in the Catchment area*, or included in the general rate. Except with the consent of a majority of the representatives of the county and county borough councils, the precept must not exceed the amount of a rate of 2d. in the £ levied on that part in any year. The Councils may also appeal to the Minister against an unreasonable precept.

Internal Drainage Boards derive their funds from contributions from the Catchment Board for the relief of low-level land and delayed benefits of works.

Drainage Boards (other than Catchment Boards), and Internal Drainage Boards derive their funds from drainage rates.

*Drainage rates* are assessed on Schedule A gross values or if the property is not assessed, by agreement, or in case of dispute by a Court of Summary Jurisdiction. (Local Government Act, 1929, Sect. 78 (1).) Non-agricultural properties must be rated at one-third of their annual values only. Rates are demanded from occupiers, but they are entitled to recover from owners the amount of the owners' rates, viz. for (1.) New works, (2.) Improvement of existing works, (3.) Catchment Boards' contribution.

Differential rates may be levied in separate parts according to *degree of benefit derived*. Partial or total exemption may be granted to uplands or to any hereditament *for any other reason*.

Owners of land who are by local Act exempted from taxation for land drainage are not protected from payment of a drainage rate by Sect. 66 of the Land Drainage Act, 1930. (*Belton v. Crewe District Drainage Board*, 1935, 33 L.G.R. 413; 2 K.B. 221.)

Drainage rates are not affected by the derating provisions of the Local Government Act, 1929.

Any Public Health or Highway Authority may contribute to the expenses of Drainage Boards and borrowing powers are given therefor.

Catchment Boards are *required* to take steps for the commutation of any obligations to repair walls and maintain water-courses within their areas, such commutation to be a capital sum or a terminable annuity for a period not exceeding thirty years.

Drainage Boards have the same *power* in their districts. The amount of such payment is to be based upon the average annual cost of the works and will be a priority charge on the land affected.

General borrowing powers are granted for authorized purposes under Sect. 46. County and County Borough Councils may borrow for their drainage powers as respects land not under the jurisdiction of a Catchment Board under Sect. 53 (2). The borrowing powers of these councils are now governed by Part IX of the Local Government Act, 1933, and they may borrow for a

period not exceeding 60 years. Unfettered liberty is given to combine for all purposes permitted by the Act subject to agreement as to proportionate bearing of expenses.

There is a saving for existing powers of County and County Borough Councils under any unrepealed statute.

The provisions of the Act are a direct reversal of the general local government policy of the past century, which has been toward the abolition of *ad hoc* bodies, the amalgamation of authorities, and the consolidation of rates.

The Act provides for new areas and authorities, the multiplication of boundaries and the assessment and collection of a new rate with duplicate machinery and procedure of publication, appeal, and recovery; and with a separate incidence and a new "annual value." Many of these provisions may be directed to make agriculture pay for benefits received, but the object might have been accomplished without duplication. The feature of the Act most objectionable to urban interests is the extension of chargeability to those who may not directly benefit.

### THE BURIAL AUTHORITY

Owing to the increase of population, there are now but few parish churchyards where interments may take place. The rapid growth of the large towns has necessitated the provision of large cemeteries. In many towns these were made and are maintained as commercial undertakings.

The Public Health (Interments) Act, 1879, enables urban and rural sanitary authorities to provide and maintain cemeteries. The Ministry of Health has power to compel a sanitary authority to provide a cemetery where one is urgently needed.

*Burial Acts.* Burial grounds may be provided under a series of Burial Acts extending from 1852 to 1906. When the area to be served by a burial ground is the same as that governed by the Parish Council or other local authority, that council becomes the Burial Authority; but in cases where the areas of more than one council are to be served the councils interested concur in forming a Joint Burial Board.

Any rural parish which has no Parish Council may form a Burial Board for itself, if it is not already joined with any other parish for such a purpose.

The distinctions between cemeteries and burial grounds are somewhat puzzling. A burial ground must have a portion of it consecrated by the bishop of the diocese. Burials in consecrated ground may take place either with or without a religious service. No burials within a burial ground may take place within 100 yards of a dwellinghouse without the consent of its owner and

occupiers. In the case of cemeteries no portion need be consecrated. (Burials Act, 1906.) Rural District Councils may provide cemeteries but not burial grounds.

Burial grounds must not be assessed to local rates at a higher value or more improved rent than that at which the same were assessed at the time of purchase or acquisition. This does not apply to a cemetery.

The Burial Act, 1900, which came into operation on 1st January, 1901, is a step towards the consolidation of the numerous and very complex statutes under which burial places are administered. The undermentioned are some of the more important changes effected by this Act.

Any chapel intended for general use must be on unconsecrated ground, if erected by the Burial Authority. The chapel itself must not be consecrated, nor may it be reserved for the exclusive use of any denomination. A Burial Authority may, at the request and cost of those residents within its district who belong to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination, on the ground appropriated to the exclusive use of that denomination. Every Burial Authority is required to submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, such fees to be of the same amount in case of burial in the consecrated and the unconsecrated parts of a burial ground.

Prior to this Act, clergymen and sextons enjoyed by immemorial custom certain vested interests in fees for burials without performing any duties. This Act enables the Burial Authority to make "equitable compensation" to an ecclesiastical officer for pecuniary loss caused to him by this enactment.

The Cremation Act, 1902, provides that the powers of a Burial Authority to provide and maintain burial grounds or cemeteries are to be deemed to extend to and include the provision and maintenance of crematoria. A crematorium means any building fitted with appliances for the purpose of burning human remains, and this term covers everything incidental or ancillary thereto.

**Accounts.** Sect. 3 of the Burial Act, 1860, required local boards and commissioners to keep separate Burial Accounts. This provision applied to Borough and District Councils who acquired burial grounds, but the section has been repealed by the Local Government Act, 1933, and Sect. 219 of that Act applies to those councils and contains only audit provisions. This never applied to cemeteries.

## CHAPTER XVI

### PUBLIC UTILITY UNDERTAKINGS AND NATIONALIZATION

PUBLIC utility undertakings are those services for which local authorities make a charge to the persons benefited. Such services are in the nature of trading undertakings. The term "trading undertaking" may be taken to mean gasworks and waterworks; electricity, tramway, and light railway undertakings; and any other exceptional undertakings (such as banks, harbours, airports and ferries) which are carried on under local Acts and in respect of which it is usually requisite to arrive at an accurate statement of profit or loss.

Certain other public services which are carried on by local authorities under their general statutory powers, and which, though not expected to be profitable, may reasonably be expected to support themselves independently of the rates, may also be classified under this head. To this class belong housing schemes carried on under the general law, and all such works as are rechargeable, partly or entirely, to others, as in the case of private street works and improvements.

The expression "public service" is not capable of precise definition, nor can the boundary line be clearly laid down between the undertakings or businesses which should, and those which should not, be classed as public service undertakings. That particular service which is a public undertaking assumes that character because (a) the course of social development has made its supply by the local authority imperative in the interests of either the whole, or a considerable section, of the community; (b) the supply entails the employment of a comparative large amount of capital which is either unremunerative during an initial period or is not sufficiently remunerative to attract private enterprise, and (c) because private enterprise has undoubtedly exploited certain essential public necessities to the detriment of the general weal, e.g. water and gas supplies.

Mr. Justice Eve held that the setting up of a printing and stationery department to do the necessary work of the Corporation was *intra vires*. The fact that the expenditure was of a capital nature was immaterial. To do work for others would have been *ultra vires*. (*A.-G. v. Smethwick Corporation*, [1932] 1 Ch. 562; 146 L.T. 480.)

### CLASSES OF UNDERTAKINGS

Trading undertakings may be divided into those which possess a monopoly and those which possess no monopoly. Of the

former—those which possess a monopoly—there are two classes, viz. those which are undertaken for a profit, e.g. tramways, markets, electricity, and gasworks; and those usually not undertaken with a view to making a profit, e.g. waterworks and cemeteries. Of those undertakings which possess no monopoly there are two classes, viz. those with a profit, as in the case of by-products, such as slabs manufactured from clinkers, coke and tar; and those which have neither monopoly nor profit, as in the case of baths, housing schemes, and other similar undertakings. But this classification cannot be considered as rigid, for many monopolies make no profit, and many undertakings which have no monopoly are very successful commercial undertakings.

On the Continent there are other enterprises which have not yet been adopted in this country, e.g. pawnbroking.

### CAUSES OF DEVELOPMENT

Municipal trading has made great progress in this country, especially during the past sixty or seventy years.

The causes which have contributed to the development of municipal trading may be said to include, *inter alia*, (i) a desire on the part of the local authority to prevent the private exploitation of public services by ensuring the maximum utility at a reasonable price, as in the case of the purchase by a local authority of a successfully worked transport undertaking; (ii) the increase of a large number of professional and technical organizations, which has caused an increasing amount of zeal to be shown by the permanent officials to demonstrate their enterprise by an encouragement of this class of undertaking; (iii) the increasing tendency for undertakings, especially those of a monopolistic character, to combine to the disadvantage of the public; and (iv) a public desire for a voice in the management of public services, a feeling which is equally inherent in the mass of the people as in the individual.

### ADVANTAGES CLAIMED

Advantages claimed by the supporters of Municipal Trading are—

(a) it is in the interest of public health and convenience, e.g. the provision of water supply by local authorities being desirable for that reason;

(b) private traders may refuse to carry through their enterprise at a loss, thus a neighbourhood might be deprived of essential services such as gas supply or travelling facilities;

(c) municipal enterprise results in reduced prices and improved services;



(d) profits pass to the building up of the undertaking or to the relief of the rates, and not into the hands of a limited number of shareholders. In the case of Glasgow and Wallasey the whole of the debt on the tramways has now been liquidated;

(e) Public administration promotes efficiency by—

(1) specialization though division of labour;

(2) experimental work not being discouraged by fear of eating up profits;

(3) dovetailing with other similar work and advantage of consolidation of borrowing powers;

(f) financial efficiency is secured. Government control requires adequate Sinking Funds, which can be utilized in lieu of new borrowings.

### DISADVANTAGES URGED

Disadvantages urged by those who oppose Municipal Trading are that—

(a) The efficiency of local authorities is lowered by diverting attention from their original functions;

(b) There is possibility of corruption in administration. This, however, could apply to services other than those of municipal trading enterprises;

(c) Because these enterprises are not run for the profit of shareholders, they are less efficient and more expensive than private enterprise;

(d) Competition is diminished, enterprise checked, and full scope for individual interest is not available, the lack of which tends to induce laxity of management and disregard of the interests of the public;

(e) Nearly all English undertakings are confined to towns. Municipalities are usually small and of fairly constant size, whereas the scale of economic construction has increased enormously. The unit of consumption has remained static, whereas the economic unit of supply has grown. The enlargement of area in the case of a service controlled by a local authority is much more difficult than with private enterprise, usually requiring statutory enactment.

(f) An increased debt may militate against the general borrowing powers of Local Government authorities. This point is one of great importance, and may not be apparent on a cursory consideration of the matter. If local authorities embark upon trading enterprises which involve enormous capital expenditure, the amount of money available for borrowing for the capital expenditure of the primary functions of Local Government, e.g.

sewage disposal works, paving, hospitals, schools, etc., will be diminished, and can be obtained only at a considerably higher rate of interest. Experience has not supported this contention.

Therefore, in the opinion of some, public ownership should be limited to cases where the evils of private enterprise are serious and apparently cannot be remedied. Every proposal to extend the sphere of public ownership should be carefully examined in the light afforded by the progress of thought, the lessons of experience, and the demands of the public.

## VARIETY OF UNDERTAKINGS

It will be readily understood that the work of any particular local authority differs widely from that of its neighbour. The local conditions of one authority may necessitate the establishment of a trading enterprise not required elsewhere. For instance, Harrogate and Leamington own Turkish baths; Hull has a telephone system; the northern metropolitan townships outside the City of London own the Alexandra Palace; Torquay owns a rabbit warren; Colchester possesses an oyster fishery; Hull and Liverpool each own a crematorium; Doncaster and Chester own race-courses—the former actually managing the races; Bournemouth and other towns own golf courses; Bradford owns an hotel and a conditioning house in which the true weight, length, and condition of articles of trade and commerce in common use in the city, viz. wools, “tops,” “noils,” yarn, and other materials, are ascertained and certified; Boston (Lincolnshire) owns docks and quays; Bristol owns the docks and harbour; Brighton purchased an aquarium in 1901, but it is unremunerative; Blackpool has a sea water supply; Birkenhead and Wallasey own ferries; and the London County Council runs free ferries across the Thames at Woolwich. Birmingham has a successful municipal bank. Liverpool, as a typical large local authority, in addition to having a works staff to carry out the maintenance of its roads, sewers, housing estates, and tramways, owns houses, farms, and lands, administers markets, hospitals, and sanatoria, runs a tramway and omnibus service, conducts an art exhibition, owns one of the best systems of waterworks in the world, supplies electric light and power, has a large public baths system, including Turkish baths and sun baths, provides public washhouses and allotments, has a salaried organist to perform on its world-renowned organ, provides public lectures and open-air concerts, conducts schools, libraries, and a museum, has boating on the park lakes and golf at three of the public parks, owns an hotel on its waterworks in Wales, an air port at Speke, and joined

with Birkenhead in the construction of Queensway (Mersey Tunnel) which connects Liverpool with Birkenhead.

## MARKETS

Markets are of great antiquity and are probably the oldest form of municipal enterprise in the country. About two-thirds of the boroughs in England and Wales control their own market places.

There are many old market customs, rights of market toll and market franchise in the country, and the local authorities are bound to respect them.

The powers of providing markets may be exercised by a Borough or Urban District Council under Sects. 44 to 63 of the Food and Drugs Act, 1938. A Rural District Council may exercise the same powers as an urban authority as to the provision and regulation of markets by obtaining the consent of the Ministry of Health.

The local authority may provide the place, house, and conveniences for holding the market, a place for weighing carts, and everything necessary or convenient for the use of the market and the approaches thereto.

The local authority may buy or lease land, buildings, and private market rights for this purpose, and may take stallage rents and tolls from persons using the market.

The local authority may make by-laws for the regulation of the market, for punishing frauds, collecting fees and rents, enforcing cleanliness, and regulating the conduct of business in the market.

Other Acts relating to markets include the Fairs Act, 1871; the Slaughter of Animals Act, 1933; the Agricultural Marketing Act, 1933; and the Livestock Industry Act, 1937. Market authorities may provide cold stores or refrigerators with necessary equipment and make reasonable charges for the same with the approval of the Minister. One result of the Marketing Schemes under the Ministry of Agriculture and Fisheries may be the closure of markets, which may have a serious effect upon an area, and a local authority should have some right of appeal or opportunity of stating the case for preservation.

The London County Council and other local authorities have powers to schedule streets which may be used for the purpose of markets.

## WATER SUPPLY

The supply of water is undertaken by the majority of boroughs in England and Wales. The capital outlay amounts in aggregate

to almost one-half of the total amount invested in municipal undertakings.

The legislation is now contained in the Public Health Act, 1936, and the Water Act, 1945. See Chapter XII.

### BATHS AND WASH-HOUSES

The legislation is now contained in the Public Health Act, 1936. See Chapter XII.

### GAS SUPPLY

The branch of municipal trading that has yielded by far the greatest net profit is the supply of gas for light, heat, and power. Only about 100 boroughs in England and Wales, however, manage their own gasworks. The proportion is much greater in Scotland and Ireland.

The first regular attempt at street lighting in London was made in 1415, when the Lord Mayor ordered householders to hang out lanterns in the winter evenings between All Hallows (31st October) and Candlemas (2nd February) for the security of houses against thieves and robbers and for the convenience of foot passengers. In 1807, Manchester Police Commissioners obtained special powers to light the streets by gas. The Lighting and Watching Act, 1833, was the first general Act dealing with the subject, followed by The Gasworks Clauses Acts, 1847 to 1871. Where there is no provision to the contrary, the latter Acts apply to all statutory undertakings authorized after 1871. The Act of 1847 requires compensation to be paid for damage caused through breaking up streets and empowers undertakers to cut off supplies in default of payment of charges. It also authorizes undertakers to enforce a contract for at least two years.

*The Public Health Act, 1875, Sects. 161 and 162, provides that any urban authority may contract for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may supply such lamps, lamp-posts, and other materials and apparatus as they may think necessary for lighting the same.*

Where there is not any company or person (other than the urban authority) authorized to supply and actually supplying gas for public and private purposes, within any part of the district, such urban authority may themselves undertake to supply gas for such purposes throughout the whole or any part of their district not included within the limit of supply of any company or person. In such circumstances a special order may be obtained from the Ministry of Fuel and Power by such local authority.

For the purpose of supplying gas within their district or any

part thereof, any urban authority may (with the sanction of the Ministry of Health) buy, on such terms as may be agreed on, all the rights, powers, and privileges, and all property of a gas company. Special Orders may be issued under the Gas Undertakings Acts, 1920 to 1932.

*The Gas Regulation Act, 1920*, enables the Ministry on the application of any gas undertakers, to transfer the operations of gas undertakings to the British thermal unit basis, and to carry out corresponding financial provisions. The Ministry of Fuel and Power may require undertakers to furnish annual accounts and statistics. The Ministry is required to appoint three gas referees. The local authority may, unless they are themselves the undertakers, appoint a gas examiner, subject to the prescription of the gas referees, to test the gas and the pressure at which the gas is supplied. The expression "local authority" means the Common Council of the City of London, the London County Council outside the City of London, and any County, County Borough, Borough, or Urban District Council.

Under the provisions of the Gas Undertakings Act, 1929, the thermal unit basis may be made compulsory on undertakings supplying more than 20 million cubic feet of gas per annum.

*The Gas Undertakings Act, 1932*, empowers local authority undertakers to invest up to one-tenth of their capital expenditure in the securities of other undertakings with consent of the Ministry. With sanction of the Ministry of Health and the concurrence of the Ministry, the local authority may borrow for purpose of such investments.

*The Gas Undertakings Act, 1934*, sets up an Advisory Board of three and abolishes the office of Chief Gas Examiner and Gas Referees, but local authorities will be empowered to appoint Examiners to make prescribed tests. Statutory limits on the amount of discount allowable are repealed. Consumers may be required to give notice when quitting premises and can be refused a supply if they have left premises in arrears with their payments for supplies. Power to cut off supplies in default of payments of charges is given to undertakers. Local authorities are forbidden to restrict the right of their tenants as to the type of power they shall use for lighting and heating.

Escape of gas from a main is *prima facie* within the rule of *Rylands v. Fletcher*, 1868, L.R. 3 H.L. 330. The liability is analogous to nuisance and overlaps with it; hence, it is a defence that the act is done under statutory powers. Where the undertakers are acting under statutory powers, it is a question of construction whether they are only liable for negligence or whether they remain subject to the strict and unqualified rule

of *Rylands v. Fletcher*. (*North-western Utilities Ltd. v. London Guarantee and Accident Co.*, [1936] A.C. 108 J.C.)

## HEALTH RESORTS

The Health Resorts and Watering Places Act, 1936, re-enacts with amendments the Act of 1921. It empowers the council of a borough or urban district to advertise the advantages and amenities of the borough or district, or any part thereof, as a health resort or watering place by the insertion of advertisements in newspapers in the British Isles not published within the borough or district, or by handbooks or leaflets, or by placards at railway stations. The sum so expended in any one financial year shall not exceed the product of a rate of one and one-third penny in the pound.

## PUBLICITY

The Local Authorities (Publicity) Act, 1931, enables local authorities to assist, to the extent of a halfpenny rate, the publicity throughout the world of the amenities and advantages of the British Isles.

## MUNICIPAL BANKS

Many local authorities have private Acts of Parliament which supplement their powers under the foregoing Acts. The City of Birmingham, for example, has established a Municipal Savings Bank under a private Act of Parliament.

The Treasury appointed in 1926 a Committee, under the chairmanship of Lord Bradbury, to consider whether it is desirable to encourage the function of municipal savings banks, and, if so, within what limits and subject to what conditions, statutory or otherwise.

The Committee reported in January, 1928. Their main conclusions are—

1. Municipal savings banks would provide some additional incentive to thrift, but the proportion of new savings which they, and they alone, would obtain, is small in relation to the whole.

2. They might tend to increase municipal expenditure, and would involve banking risks which might react unfavourably both on municipal finance and on the general credit system.

3. The general establishment of such banks within the next ten years would cause serious embarrassment to national finance during what is likely to be a very difficult period.

Birkenhead, Bristol and Cardiff obtained powers by private Acts of Parliament, in 1930, to establish savings banks, but

have not done so. There are several Scottish municipal banks, and Barnsley has established a bank under this system which is different from the English method.

### TRAMWAYS

It was not until 1868 that the first private Act of Parliament authorizing tramways, or street railways as they were called, in Birkenhead was obtained. In 1870 the first and present general Tramway Act was passed. The private Tramway Acts of 1868-9 had empowered local authorities to buy out tramway companies, after a certain period, at structural value of the plant, plus 30 per cent for the goodwill of the undertaking.

The 1870 Act provided that local authorities might purchase an undertaking, at the end of 21 years, at structural value only. Powers are obtained under a Private Act or by Provisional Order issued by the Minister of Transport. These powers are usually exercised by the councils of county boroughs, non-county boroughs, and urban districts. County and Rural District Councils have no powers under this Act, but may proceed to provide transport under the Light Railways Acts.

There is no specific limit to the fares that may be charged, the authorities being authorized to charge reasonable tolls for the use of their cars, subject to the consent of the Ministry of Transport.

Loans may be raised repayable within 30 years. Separate accounts must be kept of these expenses.

The Tramways (Temporary Increase of Charges) Act, 1920, enables the Minister of Transport to make orders allowing tramway undertakers to increase their charges. Trolley-buses and motor-buses are rapidly replacing tramways, and facilities for the extension of these modern services are provided by the Road Traffic Act, 1930.

A passenger left a tramcar without paying an excess fare. She put in a defence of forgetfulness and claimed that she had never failed to pay any due fares on being demanded personally. Under the Tramways Act, 1870, Sect. 51, it is an offence to avoid payment of fares. The information in this case had been laid under a local by-law which made it a penalty if fares were unpaid even if no demand had been made. The Court held the by-law to be *ultra vires* as repugnant to the general law and unreasonable. (*London Passenger Transport Board v. Summer*, 1935, 34 L.G.R. 459; [1935] W.N. 196.)

Immediately in front of the piece of vacant land between two houses the Swindon Corporation had erected a shelter for the use of persons intending to travel by buses owned by the corporation and by omnibus companies. Both the houses and the



land abutted on the public highway. The shelter had been erected in pursuance of statutory powers, which were general powers to erect such shelters on the public streets. The private Act giving these powers included an express prohibition of the erection of such shelters in places where there would be interference with the access to the property of the Great Western Railway Co. without the consent of that company. It was held that the erection of the shelter was an interference with the rights of the plaintiffs (the freeholder and leaseholders of the houses), but that the corporation had acted reasonably. Although the corporation was not bound by the Act to erect the shelter in a specific place, it was authorized by the Act to do something which the legislature must have contemplated would be an interference with private rights, and, as it had acted reasonably in choosing the site of the shelter, the plaintiffs were not entitled to damages for interference. (*Edgington, Bishop and Withy v. Swindon Borough Council*, [1928] 4 All E.R.)

An omnibus conductor employed by the London Passenger Transport Board was injured in a collision between the omnibus and a tramcar also belonging to the Board which crashed into the rear of the omnibus while it was awaiting the change of the traffic lights.

The conductor alleged that his injuries were caused by the negligence of the tram driver. The Board raised the defence of "common employment." The doctrine of common employment rests on the principle that a servant undertakes to run all the ordinary risks of his service including the risk of negligence on the part of a fellow servant, and is supported by a number of legal decisions.

Judge Maonaughton said he was bound by the decision of the Court of Appeal in *Radcliffe v. Ribble Motor Services* and for this reason he rejected the plaintiff conductor's argument that the doctrine of common employment did not apply. (*Metcalf v. London Passenger Transport Board*, 1938, 159 L.T. 35.)

## LIGHT RAILWAYS

The Light Railways Acts, 1896 to 1912, facilitate the construction of light railways. Orders are made in each case by the Minister of Transport in accordance with the Railways Act, 1921.

Any County, Borough, or District Council may promote, construct, work and manage a light railway. In the event of the line passing outside the area of the Council, the consent of any other Council through whose area the line passes must be obtained, unless the Ministry of Transport



decides to order otherwise. A local authority may advance money on loan to a company in order to aid that company in the construction of a light railway. The resolution of the local authority to take action must be carried by a two-thirds majority and after one month's notice has been given. Loans may be raised payable within 60 years.

### ROAD TRAFFIC ACT, 1930

Part V gives a local authority who under any local Act or Order are operating a tramway, light railway, trolley vehicle, or omnibus undertaking, powers to run public service vehicles on any road within their district, and also with the consent of the Traffic Commissioners for the traffic area in which any other road is situate, on that road without having to obtain a special Parliamentary Act or Order. Sect. 101 further provides that nothing in this Act shall authorize a local authority to run any public service vehicle—

- (a) as a contract carriage, or
- (b) on any road on which they are for the time being prohibited by any local Act or Order from running omnibuses; or
- (c) except with the consent of the authority, on any road vested in a statutory dock authority as such or in a statutory harbour authority as such; or
- (d) except with the consent of the company on any premises (not being part of a highway) belonging to a railway company and adjoining or giving access to a railway station.

Sect. 102 provides the machinery of inquiry by the Traffic Commissioners and the registration of consents on the part of the authorities which are not authorized by local Act or Order to operate an omnibus service of their own, which the Act now requires.

Sect. 102 (2) provides that the Commissioners, before deciding any application, may, and if any objection is duly received by them from a local authority, from the council of any county, or from any such person mentioned in Subsec. (1), shall hold a public inquiry into the application and shall give not less than fourteen days' notice of the holding of any such inquiry to the applicants and to any local authority, any County Council, and any such person as aforesaid by whom objection has been made.

The Commissioners, after holding a public inquiry in any case in which they consider it desirable, or in which they are by the last preceding subsection required to hold such an inquiry, may either grant or refuse the consent applied for, or may

grant a consent in such modified form, or subject to such conditions, as they think fit. In their decisions the Commissioners will have regard to traffic needs, elimination of unnecessary services, and the co-ordination of passenger traffic. Conditions against unreasonable fares may be fixed to prevent wasteful competition.

The Commissioners may at any time revoke or modify any consent, or modify any conditions attached to any consent previously granted by them to a local authority, but, before doing so, they shall give to the local authority and to any authority, County Council, or person who appeared at the inquiry as an objector to the application, an opportunity of being heard before them.

Sect. 104 provides the right to carry parcels and personal luggage.

Sect. 105 enables a local authority authorized to run public service vehicles, and any other local authority authorized to run such vehicles in any district adjacent to the district of the first-named authority, to establish working agreements.

Important provisions respecting the wages and conditions of persons employed in connection with public service vehicles are contained in Sect. 93 of the Act. The combined effect is to provide an effective extension of the trading rights of certain municipal authorities.

Not the least important aspect is the fact that under the rule which the Traffic Commissioners exercise, local authorities, in the matter of transport, are placed on a broad equality with other licence-holders. To that extent the Act is a concession to the view that what a private person or a group of persons trading for profit can legally perform should not be denied to the administrative organs of society. It was to win that instalment of an important principle that the local authorities, modifying their just claims in many instances, agreed to the division of the country into traffic areas and the appointment of Commissioners, with whom shall reside the power of licence.

## ELECTRIC POWER

The Electric Lighting Act, 1882, provided that any Borough or Urban District Council could undertake the supply of electricity, under a Provisional Order of the Board of Trade. Under the Electricity (Supply) Act, 1919, this is now accomplished by a Special Order of the Electricity Commissioners. Bradford was the first town to avail itself of this provision, but even to-day many areas are supplied by private companies. The local authority had the right to purchase the electric plant for its

existing market value at the end of 21 years, or every subsequent period of seven years.

This apparently hindered the development of the industry because a company, knowing it would be bought out, ceased to consider efficiency. As the use of electricity for lighting purposes was extending rapidly in other countries, the amending Electric Lighting Act, 1888, was passed. This lengthened the maximum period to 42 years, or every subsequent period of ten years, and required the consent of the local authority in case of the granting by the Board of Trade (now the Ministry of Fuel and Power) to a private company of both a licence and a Provisional Order, unless the Ministry saw fit for special reasons to dispense with it. This Act also proved detrimental, as it merely postponed the evil to a later day, and was the cause of a deficiency in supply, and the reason for the later legislation.

**Electric Lighting (Clauses) Act, 1899.** In 1898, the Cross Joint Select Committee reported on Electrical Energy (Generation Stations and Supply) and advocated the exemption of liability for compulsory purchase of companies supplying energy in bulk at high voltage, unless the Ministry in the Provisional Order included such a power. This resulted in the passing of the Electric Lighting (Clauses) Act, 1899. Subsequent Acts constituting power companies, therefore, contained no Section authorizing local authorities to purchase power companies. Authority was also provided for setting up a Reserve Fund not exceeding one-tenth of the capital expenditure of the undertaking and also to transfer surplus profits to the local rates.

**The Electric Lighting Act, 1909,** authorized the supply of electricity outside the area of supply of an undertaking under a Fringe Order claimed from the Central Department. Undertakers were empowered to supply electricity in bulk to other areas.

**The Electricity (Supply) Act, 1919,** was the result of reports which were submitted to the Board of Trade and Ministry of Reconstruction from 1917 to 1919. The Act provided for the Ministry to set up Electricity Commissioners not exceeding five in number, one of whom is to be Chairman. These Commissioners are empowered to examine the conditions and in certain circumstances to group areas into Electricity Districts, and by schemes to establish Joint Electricity Authorities. Such schemes must be representative of authorized undertakers within the Electricity District, and may or may not have representatives of any County Council or local authority. It is also the duty of every Joint Electricity Authority constituted under the Act to provide or secure the provision of a cheap and abundant supply of electricity within its district. For this purpose every

such authority may have such powers and duties as are conferred upon it either by the scheme under which it is constituted or by the above Act, with respect to (a) the supply of electricity within its district (including the construction of generating stations, main transmission lines, and other works required for the purpose); and (b) the acquisition of the undertakings or parts of the undertakings of authorized undertakers.

A Joint Electricity Authority was authorized, with the consent of the Electricity Commissioners, and by agreement with the owners, to acquire a generating station or any main transmission line from any such station on such terms as may be agreed.

A Joint Electricity Authority is given power to supply electricity within its district, but this power is subject to certain limitations. Any local authority which is an authorized distributor may, with the consent of the Electricity Commissioners, agree with the Joint Electricity Authority of the district in which the area of supply of the local authority or any part thereof is situated, for the transfer to the Joint Electricity Authority of the whole or any part of the undertaking of the local authority which lies within their district.

The Electricity Commissioners are empowered to undertake experiments; to appoint Advisory Committees; to grant Orders sanctioned by the Minister; and to sanction loans. Copies of the annual Accounts are required to be sent by all electricity undertakers to the Electricity Commissioners. The Accounts of the joint authorities are required to be audited by Auditors appointed by the Commissioners—in practice the District Auditors of the Ministry of Health.

The Electricity (Supply) Act, 1922, amends the Electricity (Supply) Act, 1919. The Act confers upon joint electricity authorities power, *inter alia*, to borrow money in connection with the execution of their powers and duties, subject to the consent of the Electricity Commissioners and to regulations made by the Minister, with the approval of the Treasury. Such money may be raised by the issue of stock. Sect. 5 empowers local authorities, including County Councils, to lend money to the joint electricity authority. The local authority may also subscribe to securities issued by the joint electricity authority or guarantee or join in guaranteeing the payment of interest on any money borrowed by the joint electricity authority. In the case of County Councils these powers can be exercised only with the consent of the Minister of Health.

A local authority with a population of 50,000 was authorized to assist joint electricity authorities by contributions from rate funds up to the proceeds of a rate of one penny in the £ (now

1½d.). There is no statutory limit to the amount which these authorities may borrow. The local authorities showed themselves adverse to joint action, and consequently the national schemes were formulated under the 1926 Act.

The Statutory Gas Companies (Electricity Supply Powers) Act, 1925, facilitates the supply of electricity by statutory gas companies. Such companies may apply for special orders under the Electricity (Supply) Acts, 1882 to 1922, for this purpose, and may use their funds in the promotion of such applications.

Electricity (Supply) Act, 1926. The object of this Act is to place cheap bulk supplies of electricity at the service of authorized undertakers for distribution to their consumers. It is based on the report of the Committee presided over by Lord Weir. In an industrial country which aims at maintaining a high standard of living, an adequate and readily available supply of electrical energy is of fundamental importance. It is no exaggeration to say that the problem of our national productivity could be fairly measured by the rate of increase of energy consumption in the form of heat, light, and power. This country possesses assets which, if properly utilized and co-ordinated, could yield a supply of electrical energy at costs so favourable as to confer on the industries of the country a competitive advantage over other countries in all cases other than those where a particular industry could be located close alongside a waterfall—a situation that exists only in a limited number of cases.

Investigation disclosed that this country was neither generating, transmitting, nor distributing electrical energy as cheaply as we might; nor consuming electrical energy to any extent like the same extent as other highly industrial countries.

There are three principles on which the Act is founded. These are the minimum of State control, the minimum of State interference, and the allowance of a maximum of freedom to existing undertakers. It was hoped that there would be co-operation between the owners of the selected stations and the Central Electricity Board, and that the compulsory powers provided in the Act would never be required. The central idea of the Act is to reduce the costs of generation by its concentration in the best and most efficient stations.

CENTRAL ELECTRICITY BOARD. The Electricity (Supply) Act, 1919, constituted the Electricity Commissioners. The 1926 Act created a Central Electricity Board, in addition to the Electricity Commissioners. The Board consists of a chairman and seven other members, appointed by the Minister, after consultation with such representatives or bodies representative of

the following interests as the Minister thinks fit, that is to say, local government, electricity, commerce, industry, transport, agriculture, and labour. The Board is a body corporate with a common seal, with power to hold land without licence in mortmain, and to regulate its own proceedings.

In most cases the Board is subject to the Electricity Commissioners, but in one notable instance, namely the adoption of any scheme for a given area, the Commissioners are subject to the Board. In practically all cases arbitration is provided for in the event of any authorized undertakers being dissatisfied with the decisions of the Commissioners or the Board, and in certain cases the arbitrator may award compensation.

The whole of the country is divided up into areas, which were delineated by the Electricity Commissioners. The Commissioners have formulated schemes for the reorganization of the electricity supply in each area or group of areas.

The schemes include—

1. Main transmission lines linking up the various generating stations for the purpose of interchanging supplies.

2. The provision of new generating stations that may be desirable.

3. The whole of the generating stations at present owned by authorized undertakers have been divided into two classes—selected and non-selected stations.

4. The Commissioners are authorized to close down non-selected stations or reduce them to distribution agencies.

5. Temporary arrangements may be made whereby one undertaker may be called upon to supply another on agreed terms until the scheme is in full operation. The Commissioners submit a scheme to the Board, who, after giving the required public notice, may adopt it either as a whole or in modified terms, with or without public inquiry, and at once proceed to give effect to it.

CONSULTATIVE TECHNICAL COMMITTEES. The Board are empowered to appoint one or more consultative technical committees consisting of engineers employed in connection with undertakings comprising generating stations which are for the time being selected stations.

PROVISIONS AS TO SCHEMES. The Electricity Commissioners prepare and transmit to the Board a scheme or schemes relating to the respective areas specified therein—

- (a) Determining what generating stations shall be selected stations at which electricity shall be generated for the purposes of the Board.

- (b) Providing for intercommunication by means of main transmission lines constructed or acquired by the Board.

(c) Providing for such standardization of frequency as may be essential to the carrying out of the proposals for such inter-communication.

(d) Enabling or requiring temporary arrangements (to be in force during the carrying out of the works specified in the scheme) to be made between the Board and owners of generating stations.

(e) Containing such supplemental, incidental, and consequential provisions as may appear necessary or expedient for any of the purposes aforesaid.

**SELECTED STATIONS.** The selected stations are the large economical and modern stations, suitably situated with regard to the centre of gravity of the load, and able to produce a large amount of current at the lowest possible cost. These stations are worked to the instructions of the Board. The Board does not necessarily operate them, and in most cases it is intended that they are run under the technical staff of the undertaking, but the Board control the hours during which they operate and the amount of load they carry. Some are allowed to run only during the winter months, and will deal only with the peak load. Others may be closed down at week-ends, while the best run night and day as near full load as possible. The whole of the current generated at any selected station becomes the property of the Board, and the undertakers buy back their own requirements from the Board. Once the station is selected, the Board take over the financial obligations connected with it, and at the same time may guarantee that the price of current which they resell to the undertakers will not be higher than it would have been had the original owners been free to operate the station for their own requirements alone. This guarantee appears to be for an indefinite period. The Board can require such extensions and alterations as they consider necessary.

**JOINT AUTHORITIES' POWERS.** When the Board acquire a generating station in an electricity district, for which a joint electricity authority has been established, they are, before themselves operating the station, to endeavour to make arrangements with that authority to operate it. By Sect. 6 the Board are empowered to make arrangements for the provision of a new generating station with any authorized undertakers in or in the neighbourhood of whose area the new station is situate.

Where an area of supply is situate in an electricity district for which a joint electricity authority has been constituted, the Board shall first endeavour to enter into arrangements with the existing authority for the provision of any new generating station required by a scheme.



The Act seeks to ensure that what was formerly done by some 580 mediate generating stations should be done by 130 of the most efficient, and there must be increased efficiency and a decrease in the cost of generation. They had to construct main lines, so that there would be no failure in the supply of current in any area; and they had a co-ordinating independent board of business men to decide the working hours.

The Weir Committee indicated in their report that a small number of selected stations would supply energy to a comprehensive network of transmission lines, now known as "the grid." Apart from the merits of such a scheme, it has meant an enormous capital expenditure, for which the Board has issued stock.

These main transmission lines operate at a very high electrical pressure, and before the supply could be drawn costly electrical apparatus and buildings had to be provided so that the pressure could be reduced and controlled suitably. These sub-stations are located in the most favourable positions in the supply area. When the Act came into effect the number of authorities purchasing a bulk supply was largely increased.

**STANDARDIZATION OF FREQUENCY.** Standardization of frequency will eventually be put through the whole area of this country. Electricity will be transmitted from one area to another, and the manufacturers will operate at one standard frequency. Substantial benefits to the consumer will be achieved, if the actuarial assumptions are correct, and a very considerable saving in the electricity bill of the country will be brought about. The Minister of Transport estimated that in 1940, £44,000,000 a year would be saved to the electricity consumers over and above the cheapening of current which was ordinarily supplied to them.

**EXPENSES OF CHANGES INVOLVED.** Sect. 9 provides for the alteration of frequency in order to effect standardization, and provides that the expenses of any such alteration shall be paid by the Central Electricity Board. The Electricity (Supply) Act, 1919, Sect. 24, provides that the Electricity Commissioners may require any authorized undertakers to alter the frequency employed in their undertaking, and in that event the whole of the cost would fall upon the undertakers in question.

The following subsection has been added to the end of Sect. 9—  
"Where a scheme under Sect. 4 of this Act has come into force as respects any area, the powers of the Electricity Commissioners under Sect. 24 of the Electricity (Supply) Act, 1919, so far as they relate to the amendment or alteration of frequency, shall not be exerciseable within that area."



**LIMITATION ON PRICE TO BE CHARGED TO OWNERS OF SELECTED STATIONS.** A matter of vital importance to bulk supply receivers is the question of existing bulk supply contracts or agreements. Assuming that generation is out of the question, and that hitherto various undertakings have been in the happy position of obtaining competitive prices, they will now be deprived of that right and will be required to take the supply, either directly or indirectly, from the Board, and it is possible that the Board will designate a particular undertaker as the agent for the direct supply. There will be no appeal against the Board's designation, but prices to the bulk supply receiver must be on a basis prescribed in the Act.

Plant which was previously only held in reserve has been brought into revenue earning capacity by the establishment of the "Grid." Many millions of pounds of expenditure on new plant has been avoided in this manner and the saving will grow at an accelerated pace as the saving of capital cost increases with the development of the load.

Large fuel economies have also resulted from the group working of selected stations. Between 1932 and 1934 the average fuel consumption per unit decreased by 7 per cent. This represents a saving of approximately half a million pounds.

**SALE OF FITTINGS.** Of especial importance to all local authorities who are authorized to manufacture and sell electrical current to the public is Sect. 48, which enables them also to carry out the complementary business of selling electrical fittings on such terms and conditions as may be agreed upon. The section provides that "subject to the provisions of this section a joint electricity authority and any local authority by special Act or by Order empowered to supply electricity may sell electric lines, fittings, apparatus, and appliances for lighting, heating, and motive power, and for all other purposes for which electricity can be used (in this section called 'electric fittings'), and may install, connect, repair, maintain, and remove the same, and, with respect thereto, may demand and take such remuneration or rents and charges, and may make such terms and conditions as may be agreed upon."

The exercise of the powers of this section is subject to the restriction that the joint electricity authority or local authority shall not manufacture electric fittings unless expressly authorized to do so by special Act or Order. Further, the joint electricity authority or local authority shall not sell electric fittings except (i) to a consumer or a person who intends to be a consumer of electricity supplied by them; or (ii) to a contractor who requires such fittings to enable him to supply them to a person who is, or

intends to be, a consumer of electricity supplied by the joint electricity authority or local authority. The prices charged by a joint electricity authority or a local authority for the sale of any electric fittings are not to be less than the recognized retail prices, save to a contractor. The "recognized" retail or trade prices are to be settled, if necessary, by a committee appointed by the Electricity Commissioners.

The decision in *West Midlands Joint Electricity Authority v. Pitt*, [1932] 2 K.B. 1, by the Court of Appeal is to the effect that the Minister has no power, under Sect. 22 of the Electricity (Supply) Act, 1919, to determine the monetary payment to be made in return for the right to set up pylons. Compensation must be assessed by arbitration under the Acquisition of Land (Assessment of Compensation) Act, 1919.

Sect. 43 of the Act of 1926, applying the Fifth Schedule provides that any surplus of income over expenditure may be applied in reduction of charges, reduction of loans, with consent of the Commissioners in reduction of capital expenses, or in aid of the rates, provided that the rate aid must not exceed in any year  $1\frac{1}{2}\%$  of the debt outstanding and is not to be made unless the Reserve Fund exceeds one-twentieth of the aggregate capital expenditure.

**Electricity (Supply) Act, 1935.** This Act supplemented the powers of the Central Electricity Board by empowering the Board to make arrangements directly with non-selected stations. The consent of the Commissioners is required and authorized undertakers taking or giving a supply are entitled to be heard.

Under special circumstances of an exceptional nature the Board are authorized to charge prices other than the fixed tariff.

A new method of charging for supplies in respect of haulage and traction to railway undertakings was authorized. The expenses of the Electricity Commissioners and transmission costs are chargeable in the same manner as if for a bulk supply. The supply undertakers and the railway companies may make representations with regard to these expenses. The Board may supply the railway themselves directly with the consent of the existing undertakers. Necessary provision is made for the compensation of officers whose services are dispensed with under these changes in supply. The Board is authorized to act only in cases where no financial loss will fall upon them.

**Electricity Supply (Meters) Act, 1936.** This Act was passed as a result of the decision of the Courts in the case of *Joseph v. East Ham Borough Council*, 1935 (33 L.G.R. 431 C.A.) which arose over a disputed meter reading owing to which the Council cut off the supply. An injunction was obtained against the Corporation

on the ground that there was a *bona fide* dispute. The Electricity Acts, 1882 to 1935, required meters to be of a construction and pattern approved by the Electricity Commissioners and certified by an electrical inspector. No inspector had been appointed in East Ham and, indeed, only in one or two districts had one been appointed. There was provision for an inspector to be appointed for a special occasion by the Commissioners.

The Act of 1936 repeals the provisions of the Act of 1899 with reference to certifying and examining meters and the appointment and functions of inspectors. Meter examiners are appointed by the Electrical Commissioners to examine and certify meters. The fees charged for their services are payable to a central fund. Apparatus for testing meters must be provided and maintained by undertakers, who are authorized to borrow for the purpose.

**Supply of Electricity Outside Area of Supply.** In the case of *Attorney-General v. Gravesend Corporation*, [1935] 1 K.B. 339, heard in the Chancery Division on 13th December, 1935, the Gravesend Corporation were supplying electricity to consumers outside their area of supply by means of overhead cables. The Corporation had previously supplied electricity to them under a fringe order, but this had been revoked when the Kent Electric Power Company satisfied the Electricity Commissioners that they were able and willing to give a supply on reasonable terms. The Company sought and obtained an injunction restraining the Corporation from supplying energy beyond their area of supply. For the purposes of the Electricity Acts, 1899 and 1919, "supply" means supply at consumer's terminals and, if the supply is delivered at some other place, even if that place is within the undertaker's area, and the supply is used outside that area, it is illegal.

### THE MCGOWAN REPORT

The Minister of Transport, in 1935, appointed a Committee composed of Sir Harry McGowan, Sir John Snell (Chairman of the Electricity Commission), and Mr. John Morrison, Chartered Accountant, to review distribution organization and to advise upon methods by which improvements can be effected and make recommendations. The Committee issued a Report but did not publish the evidence taken. They were satisfied that a substantial measure of simplification and co-ordination of the present structure is necessary if the fullest measure of development is to be achieved. They advocated for this purpose the absorption of the smaller and less efficient by larger and more efficient undertakings. The country should be divided by the Electricity Commissioners into areas under District Commissioners who would prepare schemes of reorganization for approval by the

Electricity Commissioners. Agreement would be necessary except where the output had not exceeded ten million units in the year ending 21st March, 1936, and in other cases only upon confirmation of the scheme by the Minister and approved by resolution passed by Parliament. Undertakings of local authorities may be included in these schemes and, if the recommendations are adopted, we may expect an extension of the American system of mixed undertakings in this country.

The terms of acquisition suggested by the Committee differ as respect private and public undertakings. For the former, capital cost, less depreciation, together with compensation for loss of future profits is proposed. For the latter, it is capital cost less depreciation only, no addition being made in respect of either contributions from rates in previous years or any right to contribute to the rates.

It is also suggested that allowance should be made for unfructified capital expenditure incurred during the three years prior to purchase to the extent to which it had not become remunerative.

It is also proposed to cancel the right of a local authority to purchase these undertakings for a prescribed period, not exceeding fifty years. The basis of purchase at the end of the fixed period should be on capital cost, less depreciation.

### MINISTER OF TRANSPORT'S PROPOSALS

Following the recommendations of the McGowan Committee, the Minister issued proposals for the reorganization of electricity distribution. These differed in certain respects from the recommendations. In place of District Commissioners, the Minister proposed to show the grouping of undertakings in the proposed legislation. No distinction is made of the undertaking producing only 10,000,000 units. Owing to the outbreak of War in 1939 these proposals were postponed.

### JOINT READING AND CONTINUOUS BILLING

Local authorities owning gas and electricity undertakings have in the past kept the two quite separately and indeed considered them as competing services. The progressive authorities have given consideration to the question of co-operation. Complete unification is found impossible because of technical differentiation, such as meter inspection, because of the differences in construction and calibration, and this is found more advantageous if left to the executive officers. Meter reading for both services, however, requires no special separate technical qualifications. Overlapping and duplication may be avoided and

the consequent economies derived by amalgamating the meter reading.

One difficulty is the necessity, under old methods, to read all meters during a few weeks in each quarter. By adopting the system of continuous or cycle billing the work of meter reading may be spread evenly over the whole quarter and year. Even progress of the work can be ensured, duplication eliminated, and greater efficiency promoted.

### STREET LIGHTING

The introduction of the electric discharge lamp is bringing about a revolution in street lighting systems. The increased efficiency of this form of lighting is evidenced in the results obtained, viz. 25 lumens per watt compared with three for the carbon lamp.

### FERRIES

By the Ferries (Acquisition by Local Authorities) Act, 1919, a County, Borough or District Council may, with the consent of the Ministry of Transport, acquire by agreement and work an existing ferry. The tolls must be approved by the Ministry. New ferries can be provided only under powers conferred by a local Act of Parliament.

### AIRPORTS

The Air Navigation Act, 1920 (Sect. 8) enables the Common Council of the City of London, the councils of counties and county boroughs and urban district councils to establish and maintain airports.

Local authorities are awakening to the need for establishing aerodromes and many have been erected in the past few years. There appears to be some need for co-ordinating the establishment of these airports on a national basis rather than to leave various authorities to follow their own devices to the detriment of the national requirements. A licence has to be obtained from the Air Ministry, and this could be used as a means of preventing sporadic construction. A run of 500 yards in every direction is required. The base of a hill should be avoided, also dangerous obstructions such as factory chimneys. A site near a river is objectionable because of the damp arising from the prevalence of fog.

### FINAL REPORT OF THE ROYAL COMMISSION ON TRANSPORT

The Third and Final Report of the Royal Commission on

Transport, dealing with the Co-ordination and Development of Transport, was published in January, 1931. Their considered view is that tramways, if not an obsolete form of transport, are at all events in a state of obsolescence, and cause much unnecessary congestion and considerable unnecessary danger to the public. They recommend, therefore, (a) that no additional tramways should be constructed, and (b) that, though no definite time limit can be laid down, they should gradually disappear and give place to other forms of transport.

Moreover, if trackless trolleys are substituted, part of the capital, i.e. that expended on power stations, etc., can still be profitably employed. In the opinion of the Commissioners inhabitants of the towns where trams exist should get rid of them by degrees and substitute trackless trolley vehicles or motor omnibuses. This view is not shared, however, by many of the undertakers in populous areas, and tramways appear to have quite a good chance of surviving for some time to come, mainly on account of the ability to deal with peak load traffic. Trolleys may ultimately prove the best solution in certain cases, or at all events form an economical transition from tramcar to motor omnibus.

## OTHER UNDERTAKINGS

Some local authorities have local powers to establish Insurance Funds. If these provisions cover risks which constitute employers' liability insurance within the meaning of the Insurance Companies Act, 1909, the local authority is liable to make a deposit of £20,000.

In February, 1932, the Court of Appeal dismissed the appeal by the plaintiff in *Attorney-General v. Smethwick Corporation*, [1932] 1 Ch. 562, from the decision of Mr. Justice Eve dismissing the action which was brought by the Attorney-General at the relation of Mr. B. T. Hill, a printer of Smethwick, claiming an injunction to restrain the defendants from using the General Rate Fund for the purposes of buying printing and bookbinding machines and establishing a printing, bookbinding, and stationery works in the borough, and for a declaration that expenditure on those objects was *ultra vires* the Municipal Corporations Act, 1882.

## SUSPENSION OF SINKING FUND PAYMENTS

The Local Government Act, 1933, Sect. 198 (2), provides that where money is borrowed by a local authority for an undertaking of a revenue-producing character, then the annual provision for repayment may be suspended, with the consent of the appropriate

Government Department, while the expenditure is unremunerative, but not longer than a period of five years.

### CENTRAL PURCHASING

Considerable economies in administration are open to local authorities by co-ordinating their purchasing arrangements. In the case of the larger authorities at least, the day is past when each department works in a separate watertight section with regard to buying. In the past cases were not uncommon where one department bought the same articles as another at a different price. The enlargement of the unit of administration, which has been an outstanding feature of local reorganization during the past hundred years or so, significantly witnessed in the creation of the County Council as the public assistance authority under the Local Government Act, 1929, has also facilitated buying in greater bulk by local authorities. There are three distinct methods whereby purchasing may be co-ordinated.

1. A separate Central Buying Department, with its own distributing stores and staffs, including technical buying officers.

2. A Buying Committee may be set up through whom the requirements of all departments pass by use of common forms of tender.

3. All buying of any particular commodity is undertaken by the department which is the largest consumer of that commodity.

The differing circumstances of each local authority will affect the decision as to which method is adopted. Where a separate Buying Department Stores is set up the economies must be sufficient to meet the administrative costs of that Department. Those who favour the third method contend that all the economies of central purchasing can be obtained with the least administrative cost and without disturbing the arrangements of the consuming departments except to notify requirements.

Central purchasing has been developed principally by County Councils, including London, Kent, and West Riding. Kent County Council's scheme originated when the Education Act, 1902, came into force and the Education Committee organized a Department for the supply of school necessities. It was controlled by the Stores Sub-committee of the Education Committee. A further development followed in 1922, when the beginning was made of the Department's productive section, with the result that to-day the manufacturing stationery and bookbinding section of the Department is producing practically the whole of the manufactured stationery required by not only the Education Department, but by almost every Department of the Council. The Department is under a Supplies Committee of



the County Council. It is organized in three main branches under the Superintendent of Supplies. The system now is the bulking of all requirements and the purchase of goods from actual manufacturers wherever possible.

### PROFITS FROM MUNICIPAL TRADING

The question whether profits should be obtained from municipal trading enterprises has received considerable attention. The arguments may thus be summarized—

(a) In favour of transfer of profits:

(1) Ratepayers' services as guarantors of undertaking should be rewarded.

(2) Ratepayers' reward for efficiency benefits, e.g. Consolidated Loans Fund.

(3) Economic effect of reduction of charges for supply services.

(4) Low rates attract new industries and residents.

(5) Attractive services of pleasure resorts should be rewarded.

(b) Against transfer of profits:

(1) The primary object of municipal enterprise violated, i.e. maximum utility at minimum prices.

(2) Legislative condemnation, e.g. Gas and Waterworks Facilities Act, 1870; Electricity (Supply) Act, 1926.

(3) Inequitable form of local taxation.

(4) Militates against industrial development.

(5) Weakens reserves of trading undertakings.

(6) Detrimental to other spheres of local government.

(7) Falsifies rate-poundage comparisons.

### FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT

#### Part I. Functions of Local Authorities

##### (A) DISTRIBUTION OF CERTAIN FUNCTIONS

1. *Gas Meter Testing.* County Borough Councils who are not MANUFACTURERS or SELLERS of gas should have power to set up a gas meter testing station and appoint inspectors, irrespective of the consideration whether the Sale of Gas Act, 1859, had been adopted by the borough council within the prescribed period.

##### (B) OTHER QUESTIONS AFFECTING POWERS AND DUTIES OF LOCAL AUTHORITIES

1. *Water Supplies.* The Commissioners commend to the



attention of all local authorities the desirability of taking active steps to secure the creation of Regional Advisory Committees. To stimulate the formation of such committees, it is for consideration whether Joint Conferences in the geographical counties might not with advantage be convened by the County Council. Several such Committees already exist, e.g. the West Riding Regional Water Scheme comprises 142 local authorities.

Note Water Act, 1945, referred to in Chapter XII.

2. *Publication of Provisional Orders.* The requirements that the full text of a Provisional Order made under the Gas and Waterworks Facilities Acts, 1870 and 1873, or under the Tramways Act, 1870, shall be published by the undertakers in a local newspaper imposes unnecessary expense upon them, and there should be substituted for this requirement a provision that the undertakers should publish an advertisement in a local newspaper that the order has been made and that a copy can be purchased from the undertaker or be inspected at a specified place.

Note Statutory Orders (Special Procedure) Act, 1945, dealt with in Chapter I.

## MINISTRY OF FUEL AND POWER

The Ministers of the Crown (Minister of Fuel and Power) Order, 1942, transferred to the Minister of Fuel and Power all the functions exercisable by the Board of Trade in relation to—

(a) coal, minerals, mines and the mining industry, quarries and petroleum other than functions relating to weights and measures;

(b) gas undertakings and the supply of gas including functions in relation to gas under the enactments relating to weights and measures;

(c) electricity including functions relating to the Electricity Commissioners; and

(d) hydraulic power undertakings.

The Ministry of Fuel and Power Act, 1945, provides for the permanent constitution of the Ministry.

## NATIONALIZATION OF PUBLIC UTILITY SERVICES

*Transport.* On the 27th November, 1946, the Minister of Transport introduced a Bill to establish a British Transport Commission, to take over undertakings or parts of undertakings relating to passenger transport by rail, road and ferries, canals

and inland waterways, harbours and port facilities within Great Britain, and also the transport of goods by road by certain undertakings.

Five Executives are to be set up for Railways, Docks and Inland Waterways, Road Transport, London Passenger Transport and (later) Hotels.

A Central Transport Consultation Committee will be established with Area Transport Users Consultative Committees in respect of passenger and goods traffic.

A close liaison will be maintained between the Commission and coastal shipping interests through a Coastal Shipping Advisory Committee.

All privately owned railway wagons requisitioned by the Minister are to be transferred to the Commission.

Compensation will be paid by the issue of British Transport Stock based on the market value of securities in the case of railways and canals, on the net value of assets acquired in the case of road haulage undertakings and privately owned railway wagons. Where the amount to be paid in the case of a road haulier or private railway wagon owner does not exceed £2,000, it will be paid in cash. In the case of local authorities the only payments to be made will be to cover the interest and sinking fund charges on the debt of the undertakings. If these undertakings are taken over free of debt no payment will be made for their acquisition.

*Electricity.* On the 20th. December, 1946, the Minister of Fuel and Power introduced a Bill to set up a British Electricity Authority to take over all the private and municipally owned electricity undertakings in Great Britain except the North of Scotland Undertaking established under the Hydro-Electric Development (Scotland) Act, 1943

Fourteen Area Boards will control the distribution of electricity generated at the Central Authority's power stations. A Consultative Council will be established for each area by the Minister from amongst members of local authorities and representatives of consumers and others interested in the development of electricity. The Councils may prepare schemes for the appointment by them of committees to be their local representatives.

Local authorities will be compensated by payments to cover the interest and sinking fund charges on the debt of the transferred undertakings. Holders of securities in private companies will receive British Electricity Stock to the market value of those securities.

## CHAPTER XVII

### POLICE

THE maintenance of public order is effected by two agencies, those known as the Police and those for the administration of Justice. The former is obviously derived from the same word as *Politics*, and implies a close and essential connection with the work or policy of the State. The administration of justice is concerned rather with the prevention of crime than with the causes which lead to violence. The Police means the police force—the body of constables—the primary constitutional force for the protection of individuals in the enjoyment of their legal rights.

#### THE CENTRAL AUTHORITY

The central authority is the Home Secretary, and by the County and Borough Police Act, 1856, power is given to the Crown to appoint inspectors of constabulary for visiting and inquiring into the state and efficiency of local forces. Each inspector is required to report generally on these matters to the Home Secretary. For the purposes of inspection, the police forces are divided into four areas. The Police Act, 1919, empowers the Home Secretary to make regulations as to the government, mutual aid, clothing, pay, allowances, pensions, and conditions of service of all the police forces. The carrying out of these rules is in the hands of the local police authority, who must comply with the regulations so made.

#### THE VARIOUS FORCES

The police areas and authorities of England and Wales are of five classes and are shown in the table on the next page.

County Police are appointed under the County and Borough Police Act, 1856, and the Local Government Act, 1888. Under the latter statute, the powers, duties, and liabilities of Quarter Sessions and of magistrates out of session, respecting the county police, are exercised and discharged through a Standing Joint Committee, consisting of equal numbers of justices appointed by Quarter Sessions and of members of the County Council appointed by the council. This Committee, with the sanction of the Home Secretary, appoints the chief constable, controls police buildings, increases and diminishes the numbers of the

Police Area	Police Authority	Chief Officer of Police	Police Fund
The City of London.	The Common Council.	The Commissioner of City of London Police.	General Rate.
The Metropolitan Police District.	H.M. Secretary of State.	The Commissioner of Police of the Metropolis.	The Metropolitan Police Fund.
A County.	The Standing Joint Committee.	The Chief Constable.	The County Fund.
A County Borough.	The Watch Committee.	The Chief Constable.	The General Rate Fund.
The River Tyne.	The Tyne Improvement Commissioners.	The Superintendent or other Officer.	The Tonnage Rates and Taxes.

county police, divides the county into "police districts," and assigns the proper number of constables to each. The County Council raises the necessary funds and may purchase or sell buildings.

**Borough Police** were first appointed under the Municipal Corporations Act, 1835 and were compulsory. They were appointed under the Police Acts, 1839 to 1919, and the Municipal Corporations Act, 1882, in boroughs of not less than 10,000 population. The Local Government Act, 1888, provided that for the future all boroughs of less than 10,000 population, according to the 1881 Census, must for police purposes be part of the administrative county. No borough force may now be maintained.

The Defence (Amalgamation of Police Forces) Regulations, 1942, made provision for amalgamation during the period of the War.

### POLICE ACT, 1946

This Act deprived all non-county boroughs of their separate police forces and amalgamated those forces with the county constabulary.

### SELECT COMMITTEE ON POLICE FORCES AMALGAMATIONS

This Committee, reported in July, 1932, and recommended that county boroughs should not be deprived of their Force. The limit of population for non-county boroughs should be 30,000. Where the population was less it should be merged in the County Force. The non-county borough should be given representation on the Standing Joint Committee. Persons without police experience should not be appointed Chief Constables, unless with exceptional qualifications or experience.

The Home Office have now definitely abandoned the idea of centralizing all investigation work in Scotland Yard and have decided to set up wireless and scientific laboratories in a number of provincial centres.

The Acts are administered in a county borough by a Watch Committee, consisting of not more than one-third of the members of the Council, together with the Mayor, who is an *ex officio* member. The quorum is not less than three. The Watch Committee appoint and dismiss the constables and make regulations for the control of the force. The Municipal Corporations Act, 1882, throws these duties upon the Watch Committee in respect of the maintenance of the police force. They cannot divest themselves of these duties, which are no concern of the Council, whose approval to the acts of the Watch Committee is not necessary.

### DUTIES

The duties of the police include the prevention and detection of crime, the maintenance of good order, inspections under various statutes, and the discharge of miscellaneous duties. These duties may be summarized as follows—

1. Prevention, detection, and punishment of crime.
2. Maintenance of order in streets and places of public resort.
3. Infant life protection.
4. Control of street trading.
5. Provision for public safety—
  - (a) Control of explosives and firearms.
  - (b) Fire prevention.
  - (c) Street traffic regulations.
  - (d) Register of aliens.
6. Protection of public morals—
  - (i) Suppression of obscene books and pictures.
  - (ii) Suppression of street betting.
  - (iii) Suppression of illegal lotteries.
7. Control of vivisection.
8. Assistance to the responsible authority relative to—
  - (i) Licensing plays.
  - (ii) Control of film exhibitions.

A county borough constable has the powers and duties by common law of an ordinary constable, and may act not only within the county borough itself but within the county of which the county borough forms a part, or within 7 miles of the county borough limits. Within this radius he must obey the lawful commands of any Justice of the Peace, but he has a general power to arrest any idle or disorderly person whom he finds

disturbing the public peace, or whom he justly suspects of intention to commit a felony, and if he acts *bona fide* he is not liable for damages, even though it may turn out that no felony was, in fact, committed. Any person who resists a constable in the execution of his duty, or incites anyone else to resist, is liable to a fine of £5, recoverable on summary conviction.

Constables are under the special protection of the law, an assault upon them being punishable by a fine of £20 or six months' imprisonment. Every constable is empowered to call on civilians to assist him in the performance of his duty, and for a civilian to refuse such assistance is a punishable offence.

## OFFICERS

Officers include Chief Constables, Superintendents, Inspectors, Sergeants, and Constables. The Regulations provide for the names of ranks by which a force shall be designated. Recruit must be under 30 years of age (40 for Chief Constable), 5 feet 8 inches at least in height, and pass an educational test. Neither a constable nor his wife must engage in business, nor must he or any member of his family hold a licence for the sale of intoxicating liquors. He must not reside on business premises. The first year of his service is probationary. The Regulations also provide a code of offences against discipline. Hours of duty are controlled, and under the Police (Weekly Rest Day) Act, 1910, one day's rest in seven must be provided. A constable is entitled to twelve days leave each year, with increases upon attaining higher ranks. The Regulations also provide scales of pay and allowances in various ranks. A constable commences at £3 2s. per week and can rise, with good conduct, to £4 10s. There are rent allowances for those for whom a house is not provided, merit and long service increases, boot allowances, plain clothes allowances for those not provided with uniforms, and scales of subsistence, lodging, and refreshment allowances. The Regulations also provide for a wartime supplementary allowance of 19s. for men and 15s. 6d. for women.

**Special Constables.** Special constables act in cases of emergency. Where there are no volunteers, the office is, by the Special Constables Act, 1831, compulsory on those who are appointed by two justices from among such of the residents in the neighbourhood as are not exempt from serving as parish constables. A refusal to serve is punishable by a fine of £5. During the period of the Great War (1914-18), in the absence of many of the police on active service, large numbers of civilians were enrolled as special constables. During the war of 1939-45 they were known as Auxiliary Police.

**Parish Constables.** Parish constables may be appointed under the Parish Constables Act, 1842, where Quarter Sessions considers it necessary, from among persons between the ages of 25 and 45, who are rated to the relief of the poor or to the County Rate, and who occupy tenements of an annual yearly value of £4.

### FIRE BRIGADES ACT, 1938

For the first time, this Act imposed a statutory duty upon local authorities to make provision for the extinction of fires and the protection of life and property in case of fire whether by maintaining a fire brigade themselves or making arrangements with other authorities or voluntary bodies. Hitherto, urban authorities have had permissive powers under the Public Health Act, 1875, and parochial authorities could adopt the Lighting and Watching Act, 1933. In the light of recent events it must be a matter for satisfaction throughout the country that this important service is being placed upon a sound and permanent basis and that in every area there will be a local authority responsible for making satisfactory arrangements for these purposes.

The Home Secretary is empowered to issue orders prescribing standards of efficiency. A Fire Service Commission is constituted, *inter alia*, to review fire protection services, co-ordinate services, and report to the Home Secretary on these matters. The Home Office may appoint Fire Service Boards to prepare schemes to be carried out in default of efficient local services. A Board will be empowered to discharge the functions of the local authority and to precept the authority for their expenses.

The Act is, however, another example of compulsion from the centre without any direct contribution towards the cost of service out of national funds. Apart from the ordinary expenses of establishment and maintaining a fire brigade, local authorities may have to pay rewards to persons rendering services in connection with the extinction of fires and the protection of life and property. In the case of members of the fire brigade such rewards may be made in addition to their ordinary remuneration.

Apart from the expenses of the Fire Brigade Commission, the Control Advisory Council, the remuneration of Government inspectors, the cost of a training centre and certain other overhead expenses, the whole cost will fall on local rates. There is also provision for mutual aid and for payment in respect of fire services provided for one area by another authority or by other persons.

The local authorities must provide and maintain a brigade, engines, appliances, and equipment, including hydrants and fire alarms. Provisions must also be made for training personnel.

Accommodation may be provided for housing equipment and staff, including any furniture reasonably required. Land may be purchased compulsorily, if necessary by an order confirmed by the Minister of Health. Arrangements may be entered into with water undertakers for securing an adequate water supply. Reasonable compensation must be paid for any water used for purposes of the Act. The fire authority may require water undertakers to provide facilities in connection with new works but must pay the extra expenses reasonably incurred.

No charges must be made upon owners and occupiers in respect of attendance at fires.

The police fire brigades are distinguished from the others mainly by the fact that they are under the general direction and control of the Chief Officer of Police, and in England and Wales the members of the brigade come under the same statutory pensions scheme as members of the police force. The other brigades are independent of the police force, and they have the advantage of the Fire Brigade Pensions Act, 1935.

The statutory authority for the employment of members of a county borough police force on fire duty is in England and Wales the Fire Brigades Act, 1938, Sect. 1 (7), which provides that the council of a borough may delegate to the Watch Committee its powers in regard to fire brigades, and in such cases the Watch Committee may employ constables wholly or partly as firemen. It was provided that from the 29th July, 1943, the employment of constables as part-time members of a fire brigade should not be allowed. Sect. 32 of the Police Pensions Act, 1921, provided that where constables were so employed any pensions, etc., which might become payable to them or to their widows or children should be paid from the Police Fund. In London the Fire Brigade is under the London County Council.

## NATIONAL FIRE SERVICE

The Fire Services (Emergency Powers) Act, 1941, transferred the administration and control of the fire services to the Ministry of Home Security for the duration of the War. Local authorities were required to make a contribution of 75 per cent of the cost of the peace-time Fire Brigades. An undertaking was given to return the fire services to local control at the cessation of hostilities.

## WOMEN PATROLS

Though there are many Special Patrols paid out of the Metropolitan Police Funds and provincial Police Forces, there are hardly yet, except in a few instances, authentic Women Police,



as they have not the full powers of the policeman. The Police Pensions Act, 1921, applies to police women, whether they have made the usual declaration of a police constable or not, but no pensions or gratuities are to be paid to husband or widower. In February, 1923, the Home Secretary announced that the women police in the Metropolitan police district would be limited to 20, under a woman inspector. The detachment is now under the control of a woman with the rank of superintendent. In September, 1924, a Departmental Committee, appointed by the Home Secretary, reported in favour of the employment of women, but suggested that the nature of their employment, the exact duties, and other matters should be left to the discretion of the local police authority.

### SUPERANNUATION

Pensions are provided out of the Police Fund in accordance with the Police Pensions Act, 1921, which is based, for the most part, upon the recommendations of the Desborough Committee, which reported in 1920. This Act provides a compulsory age of retirement when a police officer is entitled to a pension or superannuation allowance as a matter of right. The age for Constables and Sergeants is 55 years, for Superintendents and Inspectors 60 years, and for Chief Constables 65 years, with saving for men serving before the Act. Pensions are payable monthly in advance, and the amount is to be not less than one-half nor more than two-thirds wages. After 10 years' approved service, if certified as incapacitated for further service without personal default, a police officer is entitled to an ordinary pension. At any time if injured in performance of duty and incapacitated for service through performance of duty a police officer is entitled to a special pension.

GRATUITIES may be awarded for under 10 years' service where incapacity is not due to injury received in the execution of duty.

PENSIONS AND GRATUITIES TO WIDOWS are given—

(a) Where a police officer who joined the force after the 1st September, 1918, and has completed 5 years' approved service, dies while in the force or whilst in receipt of a pension, the widow shall be entitled to a widow's ordinary pension.

(b) Where a police officer dies whilst serving in the force from the effects of an injury received in the execution of his duty without his own default, or dies whilst on pension from the effects of such injury, his widow shall be entitled—

(i) Where the injury was accidental, to ordinary pension.

- (ii) Where the injury was non-accidental, to a special pension.
- (c) Where a police officer dies whilst serving in the force and his widow is not entitled to a pension, a gratuity shall be given.
- (d) Where a widow is entitled to a pension and the police authority are satisfied that there are special reasons for the grant of a gratuity in lieu thereof, the police authority may, at their discretion and with her consent, grant her a gratuity.
- (e) A widow's ordinary pension means an amount under one of two alternative scales, subject to a deduction equal to 25 per cent of the amount for each complete year of husband's pension.
- (f) A widow's special pension is equal to one-third of her husband's annual pay at the time of his death or retirement.

Payments of pensions, etc., are made out of the Police Fund. The amounts which previously went to the Pension Fund now go to the Police Fund, which receives—

(a) Rateable deduction of 5 per cent per annum on the pay of every member of the force as provided by Sect. 19 of the Police Pensions Act, 1921, as amended by the Police Pensions Act, 1926.

(b) Fines imposed by a Court of Summary Jurisdiction—

- (i) On members of a police force.
- (ii) For assaults on members of a police force.
- (iii) For other offences and awarded to informers being members of a police force.
- (iv) For offences under the Licensing Act.

(c) Fines and fees payable to or received by members of a police force and any other sums directed to be carried to a Pension Fund of a police force.

(d) Income from investments of Pension Funds.

The above provisions do not apply to the county police in the three divisions of Lincolnshire.

The Police Pensions Act, 1921, authorized any police authority to guarantee pensions to officers who continued in the force after being entitled to retire on a pension. An allowance at a rate not exceeding 12½ per cent of pay could be made to such officers during such continuance. Such allowance could not be reckoned in the calculation of the amount of pension nor be subject to deductions.

Under the National Economy (Police) Order, 1931, no new allowances could be made after the 26th October, 1931, and allowances payable had not to bear a higher proportion to the pay for the time being than the proportion previously borne to his previous pay.

The Police Pensions Act, 1926, (1) increased the deductions to

be made from police pay under the Act of 1921 so that it is on a 5 per cent basis. (2) Where, after the 30th June, 1919 (the date of the police strike), and before the commencement of the Police Pensions Act, 1921, a member of a police force has left it without a pension or gratuity and in circumstances which did not enable him to reckon his service for pension purposes, the Act provided that the police authorities might if they think fit—

(a) If he so left the force on retiring (whether voluntarily or as an alternative to dismissal), either pay to him the whole or any part of any rateable deductions which had been made from his pay or apply the same in such manner as they think fit for the benefit of his wife or widow or children, if any; or

(b) If he so left the force on being dismissed, apply the whole or any part of such rateable deductions as aforesaid in such manner as they think fit for the benefit of his wife or widow or children, if any.

The Fire Brigade Pensions Act, 1925, provides for the retirement, pensions, allowances, and gratuities of professional firemen who are members of fire brigades other than police brigades in Great Britain and their widows, children, and dependants. The provisions are extended to temporary firemen by the Fire Brigades Act, 1938, and professional firemen who rejoin for temporary service.

The Police Appeals Act, 1927, provides for a right of appeal to the Home Secretary by members of police forces who are dismissed or required to resign. The Police Act, 1945, extends this to apply to reductions in rank.

## EXPENSES

The Police Act, 1919, removed the limit of 8d. in the £ for the Watch Rate in England and Wales. In Scotland the maximum rate was raised to 3s. in the £. Contributions may also be made to Provident Funds with the approval of the Secretary of State.

**POLICE GRANT.** One-half of the net approved expenditure on police, as certified by the District Auditor of the Ministry of Health, is paid to the Police Authority by Government grants, on the certificate of the Home Secretary. Such certificate may be withheld, as in the case of Wolverhampton in May, 1944.

A Motor Patrols Grant is payable under the Road Traffic Act, 1930.

The balance is defrayed, in a county borough, out of the General Rate, and in a county as a special expenses charge out of the County Fund.

## POLICE FEDERATION

The Police Federation was established by the Police Act, 1919, for the purpose of enabling the members of the police forces of England and Wales to consider and bring to the notice of the police authorities and the Secretary of State all the matters affecting their welfare and efficiency, other than questions of discipline and promotion affecting individuals. The police are forbidden to join or to be members of any Trade Union, or of any association having for its objects or one of its objects to control or influence the pay, pensions, or conditions of service of any police force. The Federation consists of all members for the time being of the several police forces in England and Wales below the rank of superintendent, and acts through Branch Boards, Central Conferences, and Central Committees.

(a) **Branch.** The members of each police force below the rank of superintendent form a Branch of the Federation. In each police force there is constituted three Branch Boards—one for constables, one for sergeants, and one for inspectors.

(b) **Central Conference.** The Central Conference for each rank is held annually in November. Each Conference consists of delegates elected in certain proportions by the members of the Branch Boards of corresponding rank of all police forces in England and Wales.

(c) **Central Committee.** The members of each Conference elect from amongst their members a Central Committee of six members, of whom two are elected by the delegates of the Metropolitan and City of London Police Forces, two by the delegates of the County Police Forces, and two by the delegates of the Borough Police Forces. The Central Committees, either separately or as a Joint Central Committee, may submit representations in writing to the Secretary of State, and in matters of importance the Secretary of State will be prepared to give any of these Central Committees or a deputation from them a personal hearing. All elections are by secret ballot in accordance with the Ballot Act, 1872, as adopted by this Act.

**Police Councils.** The Secretary of State may arrange for holding Police Councils for the consideration of general questions affecting the police, at which any Central Committee or the Joint Central Committee, or a deputation from either of these, may be invited to meet representatives of Police Authorities, Chief Officers of Police, and Superintendents. The Chairman of this Council will be either the Secretary of State or an Officer of the Home Department nominated by the Secretary of State or any other person appointed for the purpose by the Secretary of State.

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### EDUCATIONAL SCHEMES

The efficiency of the police forces has been considerably enhanced in many counties and towns by a system of instruction in police duties. The courses of study include also civics, local government, etc. Promotion is frequently made to depend upon examination in these and kindred subjects. In this way the mental outlook of the police force has been considerably widened.

A Police College scheme was outlined by a Departmental Committee which reported in 1930.

The Police College at Hendon was declared open by the Prince of Wales in May, 1934.

### METROPOLITAN POLICE ACT, 1933

See Chapter XXX.

### POLICE PATROLS FOR ROAD SAFETY

Early in 1937, the Home Office announced a new scheme to bring about a higher standard of road sense and behaviour on the part of all road users. More frequent penal actions were not in view. Schemes were inaugurated in Lancashire and Cheshire in the North, and in Essex and the Metropolis in the South; additions were made to the various strengths for road patrol purpose. The full cost was met out of Exchequer Funds. The purpose of the scheme was to educate road users to a sense of their responsibilities towards other road users.

### SCOTLAND

In Scotland the police are either County Forces under a Standing Joint Committee or a Burgh Police.

The Standing Joint Committee consists of the Sheriff of the county with not more than seven members of the County Council and seven members of the Committee of Supply.

The Burgh Police, as in England, is controlled by a Watch Committee. They are appointed under the Police (Scotland) Act, 1857, and the Burgh Police (Scotland) Act, 1892. In Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock the police are appointed under special Acts of Parliament. In Glasgow they are administered by the Lighting and Watching Committee. The County Forces are responsible for policing the area of all burghs with a population of less than 7,000 and all Police Burghs.

As in England, one-half of the cost of an efficient force is paid to the Police Authority by Government grants after inspection by inspectors appointed by the Secretary for Scotland.

The remaining cost is raised in counties by a County Assessment, which is levied in burghs policed by the county.

In other burghs the money is raised by a special Police Assessment. The officers are the same as in England, with the addition of a Lieutenant, whose duty is to keep records, etc., in the district offices.

### NORTHERN IRELAND

In Northern Ireland there is now the Royal Ulster Constabulary which has in that area taken the place of the Royal Irish Constabulary and is under the control of the Northern Parliament.

### CIVIL DEFENCE ACTS, 1937 TO 1945

On the 9th July, 1935, the Home Office issued a Circular dealing with air-raid precautions and set up an Air Raid Precautions Department in 1936. The original idea was to invite the co-operation of Government Departments, local authorities, the Order of St. John, and the British Red Cross Society, who were requested to organize anti-gas training schemes. Arrangements were also made for members of the police forces to receive special instruction and lectures. The Government undertook to supply respirators and protective clothing and to assist financially the local authorities. The Minister of Health intimated that expenditure on air-raid precautions would be recognized for grant purposes. Arrangements were made for courses of instruction at the Civilian Anti-Gas School at Eastwood Park, Falfield, Gloucester.

The Air-Raid Precautions Act, 1937, had for its object the securing of arrangements for the protection of persons and property from injury or damage in the event of hostile attacks. The Secretary of State (Home Office) was made responsible for services, training, equipment, appliances, and other material for this purpose and local authorities were required to prepare and submit to him schemes to be carried out by them with Exchequer grant assistance.

Two types of schemes were required, namely—

1. General precaution schemes.
2. Fire precaution schemes.

A Ministry of Home Security was set up in 1939 for the co-ordination of civil defence and other war emergency services, although the Home Secretary is also in charge of the Ministry. To facilitate contact between the Ministry and local authorities, Great Britain was divided into twelve regions, with a Regional

Commissioner and staff for each area, and with officers in suitable provincial centres.

The Fire Service Department continued to be part of the Home Office organization.

The Ministry was abolished in 1945.

**Civil Defence Act, 1939.** This Act was passed with the object of facilitating further action for the protection of persons and property from enemy action, for providing for the care of injured persons, and the preservation of essential services from interruption.

The Air-Raid Precautions Act, 1937, and the Civil Defence Act, 1939, may be cited together as the Civil Defence Acts, 1937 and 1939.

### **CIVIL DEFENCE (SUSPENSION OF POWERS) ACT, 1945**

This Act (9 Geo. 6, c. 12) came into force on the 10th December, 1945. By Section 1 (1), notwithstanding anything in Sect. 1 of the Air-Raid Precautions Act, 1937, no such air-raid precaution scheme as is mentioned in that section shall be prepared or submitted by a local authority until His Majesty by Order in Council directs that this sub-section shall cease to have effect; and, by Sect. 1 (3), any such scheme as aforesaid which is in force immediately before the passing of this Act shall cease to have effect.

By Sect. 2, the operation of the Civil Defence Act, 1939, is suspended until such date as may be appointed by Order in Council to the extent specified in the Schedule to the Civil Defence (Suspension of Powers) Act, 1945.

### **THE POLICE ACT, 1946**

Prior to the outbreak of war, there was an investigation with a view to the amalgamation of small police forces with neighbouring forces. On strategetical grounds, the Defence (Amalgamation of Police Forces) Regulations, 1942, empowered the Home Secretary to amalgamate forces for the duration of the war and some amalgamation Orders were issued. Under this Act, as from the 1st April, 1947, police forces of non-county boroughs will be merged with the county constabulary for the county in which they are situate. This will abolish 45 borough forces. There is a saving provision in respect of borough forces of boroughs whose population exceeded one-half that of the whole county on the 30th June, 1939. This applies only to Cambridge and Peterborough. Other forces may merge by voluntary agreement. Where he deems it expedient in the interests of efficiency, the Home Secretary may issue orders for the compulsory

amalgamation of remaining forces, but not if the police area has a population of 100,000 or more if the force would form a minority in the combined force. Police authorities may object to amalgamation and then a local inquiry must be held by an independent person. Amalgamation schemes must also be laid before Parliament and thus give any Member the right to object to the scheme and to test the will of Parliament on the proposal. The Provisions of the First Schedule with regard to the adjustment of rates are important. If, by reason of these amalgamations, the police rate of a borough exceeds by 2d. in the £ the borough police rate in 1938-9, three-fourths of the difference is to be allowed for 1947-8, one-half for 1948-9, and one-fourth for 1949-50 by means of a differential rate. If, in the same county, the police rate for any borough would be the same or less than 2d. in the £ below the notional standard rate for the county, the borough has not to be called to bear any of the cost of the differential rate. Police authorities are empowered by the Act to purchase land compulsorily by an order which has been confirmed by the Minister of Health.

#### **THE FIRE SERVICES (EMERGENCY POWERS) ACT, 1941**

This Act transferred the administration and control of all fire services to the Home Office (Minister of Home Security). Local authorities were required to make a contribution of 75% of their expenditure in the standard year (1939-40) to the cost of the new National Fire Service. Those without local fire services were required to contribute the proceeds of a rate of 2d. in the £. The local authorities remained responsible for the payment of pensions, allowances and gratuities in respect of professional firemen and whole time police firemen and received the rateable deductions from their pay. Other financial relations affected rents payable, contributions in lieu of rates, maintenance of premises, loan charges, and ambulance services. An undertaking was given to return the fire services to local control after the emergency. This promise the Government will keep but have indicated that, in order to gain the advantage of administration over large areas, the transfer back will be to larger units of organization—the councils of counties and county boroughs. There will also be a large measure of central control together with direct grants from the Exchequer. Local resources will be taken into consideration in the distribution of these grants.

#### **THE FIRE SERVICES BILL, 1947**

This Bill provides that all fire services shall be retransferred to the councils of counties and county boroughs as from the 1st



April, 1948. This is in accordance with the undertaking given when the Fire Services (Emergency Powers) Act, 1941, was before Parliament that the fire services would be returned to local control after the termination of the emergency which had been responsible for the nationalization. The cessation of hostilities brought an end to the air-raid damage which had necessitated centralization of the fire-fighting forces.

## SECTION IV TRANSPORT

### CHAPTER XVIII

#### HIGHWAYS, STREETS, AND BRIDGES

THE King's Highway is a perpetual right of passage in the sovereign, for himself and his subjects, over land within his kingdom. A highway is defined by Blackstone as "a public road which all subjects of the realm are entitled to use." The term "highway" in its widest sense comprises all portions of land over which every subject of the Crown may lawfully pass. It is essential to the idea of a highway that it should be open to all members of the public. The definition at once excludes land over which a man may pass by virtue only of a licence personal to himself, or in the exercise of his right as the owner or occupier of other land to which an easement over that land is appurtenant. It excludes roads, commonly called occupation roads, laid out for the accommodation of adjoining properties, and legally open to them only. (Pratt and Mackenzie on *Highways*, Seventeenth Edition, page 1.)

#### DEFINITION

The term "highways" includes bridleways and footways as well as carriageways. In the Highway Act, 1835, the term is defined (Sect. 5) to mean "all roads, bridges (not being county bridges), carriageways, cartways, horseways, footways, causeways, churchways and pavements."

The term "road" as included in the foregoing definition of highway, has the meaning "Public Road," i.e. a road over which a right of way to the public exists. The Local Government Act, Memorandum No. 9 of April, 1929, says: "The term 'road' means a highway repairable by the inhabitants at large and includes bridges so repairable." The Town and Country Planning Act, 1932, Sect. 53, defines a road as "'road' includes a drift-way and a footway." The dictionary definition of a drift-way is "a common way for driving cattle in."

#### THE HIGHWAY ACT, 1835

The general Highway Act, 1835, was virtually the Act which developed the system of maintenance for each parish, and

empowered it to levy a rate. At common law the parish was the unit of area in respect of the repair of highways, and the obligation to repair rested upon the inhabitants thereof at large. By the Highway Act, 1835, the inhabitants of the parish were required to appoint a surveyor of highways. Power was given to unite parishes into a district, and for the appointment of a district surveyor for the purpose of the Act, and in parishes with a population over 5,000 to elect a board to fill the office.

The Act also sanctioned the appointment of a surveyor, who might be a salaried officer, for each parish. The Towns Improvement Clauses Act, 1847, legalized the office of Town Surveyor, which was confirmed by the Public Health Act, 1848. Experience proved that the unit of the parish was too small, and the Public Health Act, 1848, made the new Local Boards of Health, as the urban sanitary authority, the Surveyors of Highways.

The Local Government Act, 1894, definitely abolished both the Highway Districts and Highway Parishes, and merged them into Rural Sanitary Districts.

### CENTRAL AUTHORITIES

The Ministry of Transport is the principal authority under the Ministry of Transport Act, 1919. It acts through the statutory Road Committee, which replaced the Road Board constituted under the Development and Road Improvement Fund Act, 1909. The Ministry of Health is the loan sanctioning authority. The Treasury, acting through the Public Works Loan Board, may make loans.

### LOCAL AUTHORITIES

Consequent upon amendments made by the Local Government Act, 1929, County Borough Councils have control over all highways in the county borough, and County Councils are the authorities for classified roads in urban areas and all highways in rural districts; but non-County Borough, Urban and Rural District Councils may have powers delegated to them by the County Councils under the Acts.

Urban authorities have full control of all *unclassified* roads and streets. The larger urban authorities may also manage their *classified* roads as agents for the County Council.

### HIGHWAY AND BRIDGE AUTHORITIES

"Highway authority" in relation to any road means the authority (being a County Council, County Borough Council, an Urban District Council, the Common Council of the City of London, or Metropolitan Borough Council) which is responsible

for the maintenance of the road. "Bridge authority" means the authority or person responsible for the maintenance of a bridge. (Road Traffic Act, 1930 (Sect. 121 (1).)

### CLASSIFICATION OF ROADS

This has been done by the Ministry of Transport—

*Trunk Roads.* Trunk Roads Acts, 1936 and 1945, provide for the transfer, from the Highway authorities to the Minister of Transport, of the full responsibility for the maintenance and improvement of trunk roads as scheduled in the Acts.

Class I. Roads being the main roads or great arteries along which the main traffic flows.

Class II. Roads being the most important thoroughfares, not created Class I roads.

Class III. Roads classified in 1946; being roads previously unclassified, but of equal importance to classified roads.

Un- Roads being other roads and streets, which include classified. all roads and streets of minor importance.

The Ministry of Transport has issued a series of official road maps showing the different classes of roads, numbered according to their place of origin.

Main roads may be either Class I, Class II, or Class III roads.

### CREATION OF HIGHWAYS

Highways may be created—

(a) by statute, e.g. by express enactment or under an Enclosure Act;

(b) by dedication to the public by the owner of land of a right of passage over it subject to acceptance by the local authority; or

(c) by "right-of-way" where it may be presumed from long uninterrupted use of the way by the public.

The Rights of Way Act, 1932, provides that normally twenty years' uninterrupted use dedicates as a public way, and forty years absolutely;

(d) by public construction;

(e) by adoption.

A public right of way by implied dedication may be proved, even though the period of user is less than twenty years. (*Jones v. Bates*, [1938] 2 All E.R. 237.)

New highways created by statute may be made by—

(1) *the Ministry of Transport* under the Development and Road Improvement Funds Act, 1909 (as modified by the Ministry of Transport Act, 1919); or

(2) *any highway authority* under the powers possessed by them under—

- (a) the Highway Acts; or
- (b) the Public Health Acts; or
- (c) the Local Government Act, 1888, etc.; or

(3) *an appropriate local authority* under the Town and Country Planning Act, 1932.

(4) *a housing authority* as landowner, including the rural district councils under the Housing Act, 1936.

The Ministry of Transport possessed the former powers of the Road Board under the Development and Road Improvement Fund Act, 1909, incorporated in the Ministry of Transport Act, 1919. By Sect. 8 (i) of the former Act, with the consent of the Treasury, the Ministry can construct and maintain new roads (including bridges) required for facilitating traffic in any part of the United Kingdom. For this purpose it may acquire land not only for the road itself but also up to 220 yards on each side from the middle of the road, and sell, lease, or manage this land, which is, of course, improved in value because of the road. If it cannot acquire the land on reasonable terms, it may apply to the Development Commissioners, who may (without a Provisional Order Confirmation Act) make an order authorizing compulsory purchase. The Minister of Transport is also given power, with the approval of the Treasury, to make advances, whether by grant or loan, on such terms and conditions as he thinks fit, for "the construction, improvement or maintenance of roads, bridges, or ferries." He may not, however, without the consent of the local authority, or of the Minister of Health, impose conditions which entail expenditure on a local authority. The Act further provides that the Minister, for the purpose of making the above advances, may, after consultation with the Roads Committee and the local authorities affected, classify roads. The Minister may also, by agreement with a local authority, pay half the salary and travelling expenses of their engineer and surveyor, provided the conditions of appointment and service are subject to his approval.

## COUNTY ROADS

For many years the main arteries of traffic throughout the country were turnpike roads, that is to say roads subject to turnpike trusts. Such trusts were created by statute and were under the management and control of trustees who were authorized to take toll from persons using the roads.

Main roads are by the Local Government Act, 1929, Sect. 29 (1), known as "County Roads." The Highways and Locomotives (Amendment) Act, 1878, provided that Quarter Sessions (now the County Council) may declare any important highway to be a "main road." (Sect. 15.) On the other hand, the same authority may apply to the Ministry of Transport, who for this purpose take the place of the Local Government Board (now the Ministry of Health), for an Order declaring that a main road or any part of a main road shall cease to be such and become an ordinary highway. If, after inspection, the Minister is satisfied that it ought to cease to be a main road and become an ordinary highway he shall make an order accordingly.

County roads are either: (a) a road which has ceased since 31st December, 1870, to be a turnpike road, (b) a road declared by the County Council a main road, or (c) all other roads and streets in a rural district, and (d) classified roads in an urban district and non-county borough. All roads in a County Borough are under the control of and repairable by the County Borough Council.

In certain cases the Council of an urban district or non-county borough may repair a county road on terms arranged with the County Council. The majority of the main roads are, however, repaired by the County Councils in accordance with the Local Government Act, 1888, as amended by the Local Government Act, 1929.

## MAINTENANCE OF COUNTY ROADS

The effect of the Highways and Locomotives (Amendment) Act, 1878, was to throw upon the county one-half of the cost of maintaining main roads, while the highway authorities were responsible for the other half with a grant for maintenance from national funds. A great change was made, however, by the Local Government Act, 1888, Sect. 11 of which provides that every road in a county which is for the time being a main road within the meaning of the Act of 1878, inclusive of every bridge carrying such road, if repairable by the highway authority, shall be wholly maintained and repaired by the council of the county in which the road is situate.

The Local Government Act, 1929. With the growth of motor traffic and the enormously increased load which modern roads are called upon to bear, the injustice of saddling the expense upon the district in which the roads are situated became more and more apparent, and, in spite of the assistance given by the Road Fund and by the taking over of the main roads by the County Councils, the burden of maintaining the highways

proved grossly unequal in its incidence and very burdensome in its effect on individual districts.

Roads are dealt with in Part III of the Local Government Act, 1929. It provided for the transfer to County Councils of—

- (a) all highway powers of Rural District Councils, and
- (b) all classified roads in Urban Districts and Non-county Boroughs.

This reform was justified in view of the great increase in the volume of road transport during the prior few years. The cost of the maintenance of roads has been very heavy upon authorities of small districts whose ratepayers make little use of the roads, but through which much heavy traffic passed. Main roads had been maintained and repaired at the cost of the County Council since 1888, but subsidiary roads are now carrying many times the amount of traffic which the main roads carried even a dozen years or so ago.

Urban authorities with a population of over 20,000 are entitled to claim to maintain the "county" roads, but the approved expenditure is repaid by the County Councils.

The council of a county district may apply to the County Council for the delegation to them of the duty of maintenance and repair of the roads in their district, as will be described later.

Financial control of the roads whose maintenance and repair is delegated remains with the County Councils, and the District Councils act as their agents.

Borough and Urban District Councils continue to be responsible for the maintenance of the roads in their areas which are not maintainable by the county council. County Borough Councils and Metropolitan Borough Councils retain their existing responsibilities in respect of all roads in their areas.

## UNCLASSIFIED ROADS

Unclassified roads are all roads other than trunk roads and those in Classes I, II, and III which have been adopted, and are therefore maintainable by "inhabitants at large." They are administered, at present, by the Borough or Urban District Council and the County Council in rural areas.

The expression "Ordinary Road," or "District Road," is usually applied to a highway repairable by the Borough or District Council within whose area it lies. A "Private Road," or "Occupation Road," is a road which is not a public highway, but made for private purposes. The word "Street" (from strata,

a paved way) generally means a road which has houses built more or less continuously on one or both sides of it.

### TRUNK ROADS ACTS, 1936 AND 1945

Liability for the maintenance, repair, improvement, and other dealing with approximately 8,000 miles of trunk roads, as specified in the Schedules to the Acts, was transferred from the existing responsible highway authorities to the Minister of Transport under the provisions of these Acts. County boroughs do not benefit to any great extent, as the system is applied only in the case of roads by-passing built up areas. The Minister need not undertake the necessary work directly but may arrange for the local highway authority to carry out the work as his agents for periods of two years, the Ministry reimbursing the local authority their expenses.

In such cases the local authority act as agents of the Ministry of Transport, who are the real and only highway authority. The council is not entitled for this purpose to the protection of the Public Authority Protection Act, 1893, Sect. 1. (*Drake v. Bedfordshire County Council* (1944), 60 T.L.R. 304.)

It is estimated that a cost of approximately £3,000,000 per annum has been transferred to the Minister by these provisions. This expenditure is now met out of moneys provided by Parliament, directly in the case of administrative expenses or through the medium of the Road Fund in respect of other expenses. Local authorities are not required to make any direct contribution to the cost of future works on trunk roads, but a financial adjustment has been effected through the medium of the block grants payable to local authorities. The cost is therefore being spread over all counties and county boroughs, although the rate-borne expenditure of county councils only will be relieved except in a few cases. Each authority will bear its block grant share of the total. The Minister's power of making grants out of the Road Fund is extended to expenditure on lighting trunk roads and certain other minor directions. The Minister has not taken over the debts of local authorities in respect of these roads. In this connection consideration had to be given to the fact that some authorities had already met the cost out of revenue.

### MEANING OF NEW STREET

"There are two ways in which a street may come into existence. A person may take a grass field, or a country lane (for in my opinion it makes no difference whether or not there was a public highway, lane, or footpath before, which is thrown into



the street and is utilized, or whether there was nothing but a mere plot of grass land out of which a new roadway is made) and build continuous lines of houses so as to form what is commonly known as a street. When I say continuous lines, I do not mean there are to be no breaks or intervals, but there must be a certain degree of continuity.

"A new street may arise in another way, and that is where it is not from the first laid out as a street in a formal manner, but may be considered to grow up, so to say, of itself. This often happens where there is an existing highway, and many people build houses along the sides of that highway, so that without any intention of laying out a street the street grows.

"When does it become a street? This question cannot be answered until you know the locality. It must be a question in each particular case, when the road becomes a street. At some time or other it becomes a street, and so soon as it does so it is a new street and not the less a new street because some of the houses were built before it was a street." (Jessel, M.R., in *Robinson v. Barton Eccles L. B.* (1883), 8 App. Cas. 798; 48 J.P. 276.)

## MAINTENANCE OF HIGHWAYS

**Declaration of a New Street.** The Public Health Act, 1925, may be adopted, and provides: In cases where an existing highway has been declared by the order of a local authority under Sect. 30 (1) to be a new street for the purpose of the application thereto of their by-laws, the procedure is as follows—

It is provided that upon such order coming into operation any person who commences to erect a new building upon land abutting on or adjoining the highway, or portion of the highway, by the order declared to be a new street, shall, in relation to that land, be deemed to be laying-out a new street within the meaning of the by-laws of the local authority with respect to new streets or of any provision in a local Act with respect to the width of new streets. (Sect. 30 (4).)

**Continuation of an Existing Street.** A street may be deemed to be a new street for the purpose of the application of any by-laws of the local authority with respect to new streets, or of any provision in a local Act with respect to the width of new streets, notwithstanding that it is a continuation of an existing street. (Sect. 29.)

The Housing Act, 1936, provides that where, in connection with housing operations to which the Act applies, new buildings are constructed, or public streets and roads are laid out and constructed, in accordance with plans and specifications approved by the Minister of Health, the provisions of any building by-laws shall not, so far as they are inconsistent with the plans and

specifications so approved, apply to those buildings and streets. (Sect. 138 (1).)

Variation by the local authority of the position, direction, termination or level of new streets and the fixing of limits is provided by Sect. 17 of the Public Health Acts Amendment Act, 1907, in the case of a borough, urban or rural district, or contributory place to which the section is applied by Order of the Minister of Health.

Where Sect. 31 of the Public Health Act, 1925, has been adopted or applied in boroughs, urban and rural districts, or contributory places, it is enacted as follows, viz.—

That whenever application is made to the council to approve the plans of a new street in pursuance of any by-law or enactment requiring a plan to be submitted to the council, and such new street, in the opinion of the council, will form—

(a) a main thoroughfare or a continuation of a main thoroughfare, or means of communication between main thoroughfares in their district or contributory place; or

(b) a continuation of a main approach, or means of communication between main approaches to such district or place;

the council may, as a condition of their approval, require that the new street shall be formed of such width as they may determine.

Where Sect. 32 of the Public Health Act, 1925, has been adopted or applied in boroughs, urban and rural districts, or contributory places, it is enacted as follows—

Where an owner proposes to lay out a new street upon land which adjoins or abuts on an existing highway, and buildings have been or are about to be erected on one side only of that highway, the local authority in any case in which they are empowered to require such owner to widen the existing highway to the width prescribed for a new street by any by-law or enactment with respect to the width of new streets,

(a) may, instead of requiring the existing highway to be widened to the prescribed width.

(b) by order permit such owner to widen the highway to such less width as may be specified in the order.

(c) so, however, that the distance between the centre line of the existing highway and the boundary as (extended) of the highway on the one side adjoining the land of such owner shall not be less than one-half of the prescribed width.

There is no power to require any degree of making-up a street *before* building in a street. (*Rudland v. Sunderland Corporation*, 1885.)

Where a local authority received grants from the Ministry of Transport and a contribution from a private firm in respect of the construction of a new road, it was held that they were allowed a deduction for wear and tear in respect of the full cost: "the actual cost to the person by whom the trade is carried on" has

no relation to the source from which the person obtains the money to pay the cost. (*Birmingham Corporation v. Barnes*, [1935] A.C. 292; 152 L.T. 558.)

### MAKING OF NEW STREETS

Apart from the duty of the developing owners, the local authorities, viz. the councils of counties, boroughs, and urban districts are primarily responsible for the making of new streets. They may be assisted by the Ministry of Transport in certain cases.

The powers are contained principally in the Public Health Act, 1875. The Public Health Acts Amendment Act, 1890, and the Public Health Acts Amendment, 1907, and the Public Health Act, 1925, contain various amending and additional provisions concerning the construction, paving, etc., and improvement of streets.

County and County Borough Councils, under the Local Government Act, 1888, may widen and improve existing roads. They have powers to make new roads under the Highway and Bridges Act, 1891, and the Development and Road Improvement Fund Act, 1909.

**Urban Sanitary Authorities.** Under the Public Health Act, 1875, urban sanitary authorities may purchase any premises for the purpose of widening any street or making a new street. (Sect. 154.) The Ministry of Transport may assist the council, as in the case of County Councils, who may also contribute. The local authorities may agree to maintain roads when constructed, and by a two-thirds majority of the council may agree to contribute towards the cost. Two Justices of the Peace may order an urban authority to widen a public road to 30 ft.

Rural District Councils may maintain, repair, and improve their roads only by delegation from the County Councils.

At common law, the maxim was, "Once a highway, always a highway." The actual enjoyment by the public and the actual suffering of the right by the landowner must be provided for the full period and must have been enjoyed openly, not by force nor permission. Interruption must be physical stopping of the enjoyment and not mere challenge. (*Mersham Manor Ltd. v. Coulsdon and Purley U.D.C.*, 1936, 34 L.G.R. 356; [1937] 2 K.B. 77.)

### REPAIR AND MAINTENANCE OF STREETS

At common law the liability to repair highways fell upon the inhabitants of the parish, and the only way in which a parish could escape liability was by proving that some other person or body was liable to repair. Accordingly, before the year 1835, as soon as a highway was dedicated to the use of the public, and, in fact, used by them, it became repairable by the parish.

Prior to 1894 the principal highway authority was the "Surveyor of Highways" in the highway parish; the District Highway Board in a highway district; and the Local Board of Health, the Borough Council, or the Improvement Commissioners in an urban sanitary district. The local authorities who are now responsible for the repair of all highways repairable by the inhabitants at large are the County Councils, the Borough Councils, and the Urban District Councils. These local authorities have, as respects highways, all the powers, duties, and liabilities of a Surveyor of Highways appointed by the Parish Vestry under the Highway Act, 1835, and also of an Urban Sanitary Authority under the Public Health Act, 1875.

The Public Health Act, 1875, confers important powers on local authorities with regard to the taking over and maintenance of roads, and in this connection the distinction between *non-feasance* and *misfeasance* is interesting. A highway authority is liable to action by an individual who has suffered damage through *misfeasance* but not for *non-feasance*. (*Harrington v. Derby Corporation*, [1905] 1 Ch. 205.)

**LIABILITY FOR ROAD INJURY.** A plaintiff claimed damages from a local authority for personal injuries caused while cycling and alleged to be due to road subsidence following the filling of a trench made by the defendants as the sanitary authority in order to connect certain drains with their sewer. A jury found that, although the original work was not done negligently, the authority were negligent in not discovering and taking steps to remedy the danger. The Court of Appeal found in favour of the plaintiff.

The case is interesting in its application to the doctrine of liability for *misfeasance*, but not for *non-feasance*. (*Newsome v. Darton U.D.C.* (1938), 159 L.T. 153.)

Under Sect. 149 of the Public Health Act, 1875, it is provided that—

All streets, being or which at any time become highways repairable by the inhabitants at large within an urban district and the pavements, stones, and other material thereof, and all buildings, implements, and other things provided for the purpose thereof, shall vest in and be under the control of the urban authority.

This section in terms refers to all urban authorities (now styled Borough Councils and Urban District Councils), and casts upon them the duty of causing, from time to time, all streets being highways repairable by the inhabitants at large, to be levelled, paved, metalled, flagged, channelled, altered, and repaired as occasion may require.

The provisions of Sect. 149 of the Public Health Act, 1875,

may be declared to be in force in a rural district or contributory place by an Order of the Minister of Health under Sect. 276 of the Act, and will be enforced by the County Council.

A highway cannot be adopted under the Highways Act, 1835, unless it is deemed to be necessary, is properly made, and has been inspected and passed by the Justices. It then must be used by the public for twelve months, during which time the person offering it must repair it. Local authorities may, however, agree to accept the road without the intervention of the Justices and without asking for twelve months' repair.

### LIABILITY OF HIGHWAY AUTHORITY

The interest of a public authority in the surface of a street extends only to so much thereof, whether above or below the surface (*Finchley Electric Light Co. v. Finchley U.D.C.*, [1903] 1 Ch. 437), as is necessary for the control, protection and maintenance of the street as a highway for public use, and does not extend to the subsoil. (*Westminster Corporation v. London & North-Western Railway*, [1905] A.C. 426.)

A motor car caused a loose metal traffic control stud to strike and injure a cyclist. The District Council claimed immunity from liability on the ground that highway authorities are not liable for *non-feasance*. (*Russell v. Men of Devon*, 1788, 2 T.R. 667.) The Council were guilty of creating a nuisance which damaged the plaintiff and the Epsom County Court Judge was quite correct in holding them liable for damages. (*Skilton v. Epsom and Ewell U.D.C.*, [1937] 1 K.B. 112; 154 L.T. 700.)

### LIABILITY OF FRONTAGERS

If the owner of a house converts it into a shop and the garden in front of the house is covered with asphalt and made to appear part of the highway, so that to outward appearances it becomes part of the pavement, although in fact it is not, the owner is liable to a pedestrian for damages if he walks from the highway on to this asphalt land and suffers injury by reason of its lack of repair.

The owner is liable for breach of his duty to keep the property safe—to render it not dangerous for people who are using the highway. (*Owen v. Thomas Scott & Sons (Bakers), Ltd., and Wastall* (1939), 3 All E.R. 663; 88 L.J. 85.)

### POWER OF DELEGATION

Part III of the Local Government Act, 1929, provided that the County Council should become the highway authority in all

rural districts. Power is given by Sect. 35 for all County District Councils to apply to the County Council for delegation to them of the maintenance and repair of the roads in their districts. In the case of unclassified roads the County Council is bound to grant their petition unless satisfied that, in view of the circumstances of the general highway administration, the application should be refused. There is an appeal from such refusal to the Ministry of Transport. In the case of other roads the matter is left to the discretion of the County Council. It is doubtful whether Rural District Councils, having lost the status of a highway authority, would wish to continue to exercise road functions in a restricted way. It would generally prove both wasteful and inconvenient for a Rural District Council with depleted resources to maintain a highway staff and equipment for such a limited purpose.

### OTHER LIABILITIES TO REPAIR

It has already been pointed out that at common law the inhabitants of a parish at large were bound to repair the highways therein. This rule admitted of three exceptions arising from (a) prescription; (b) tenure; and (c) enclosure; when the obligation was thrown on some private person or corporation.

The liability *ratione tenuræ*—i.e. by reason of the tenure of particular lands—as well as that of prescription may be established by proving that for a number of years the persons charged and their predecessors have repaired the road in question. The liability to repair must be immemorial, and it may be negated by showing that it originated within living memory.

The liability *ratione clausuræ* arises where a highway crosses unenclosed land, and a right to deviate on to the land, when the highway is impassable, has been acquired by the public. In this event, if the owner encloses his land, he becomes liable *ratione clausuræ* to repair the highway. If he owns the land and erects fences on both sides he is liable to repair the whole width of the road, but if he erects a fence on one side only he is liable to repair half the width of the road.

### NUISANCE ON HIGHWAYS

A public nuisance with which local authorities are concerned may be defined as an unlawful act or omission endangering the lives, safety, or health of the public or some part of the public, depriving some member of the public of some right common to all bodies of the constitution.

Anything done in reference to a highway which makes it less safe or commodious for use by the public is a nuisance at common law. A highway may, however, have been dedicated to

public use subject to the existence upon it of what would otherwise be a nuisance. It is the duty of the road authority to keep every highway under its control fit to accommodate ordinary traffic which passes or may ordinarily be expected to pass along it.

Such ordinary traffic may change in course of time, and the road must be made and kept suitable to serve such changing requirements. Sect. 19 of the Public Health Acts Amendment Act, 1907, provides for the execution of urgent repairs in the case of streets not being highways repairable by the inhabitants at large. That section extends, however, only to a borough, urban, or rural district, or contributory place, where such section is declared by an Order of the Minister of Health to be in force.

In a rural district the function is now exercised by the county council.

### **BREAKING OPEN OF STREETS**

See Public Health Act, 1936, Part XII, *ante*.

The Public Health Act, 1925, enables sanitary authorities to make by-laws for the prevention of danger or obstruction to persons from apparatus in connection with wireless installations.

### **WIDENING AND IMPROVEMENT OF STREETS**

There are various provisions in the Public Health Acts relating to the widening and improvement of streets.

Under Sect. 154 of the Public Health Act, 1875, a Borough or Urban District Council may purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street.

Sect. 154 of the Act of 1875 may be put in force in a rural district or contributory place therein by Order of the Minister of Health under Sect. 276 of the Act.

To remove doubts, it was enacted by Sect. 83 of the Public Health Act, 1925, that the purposes of Sect. 154 of the Act of 1875 include the improvement and development of frontages or of lands abutting on or adjacent to any street.

Sects. 66 and 68 of the Towns Improvement Clauses Act, 1847, relating to the improvement of the line of streets, are, as respects urban districts, incorporated with the Public Health Act, 1875, by Sect. 160 (2) thereof.

### **IMPROVEMENT LINES**

The Public Health Act, 1925 (Sect. 33), which contains the substantive provisions respecting the widening of streets, may be adopted by Borough and Urban District Councils, under the provisions of Sects. 3 and 4 of the Act. As respects a rural district,

or a contributory place therein, the Minister of Health may by order apply the provisions in Sect. 33 thereto. The powers conferred on Borough or District Councils under Sect. 33, with respect to streets, may be exercised by County Councils with respect to main roads.

As respects a street repairable by the inhabitants at large, the council may prescribe in relation to either side of the street, at or within a distance of fifteen yards from any corner, the line to which the street shall be widened, called the "improvement line." (Sect. 33 (1).)

No new building, erection, or excavation is, after an improvement line has been prescribed, to be placed or made nearer to the centre line of the street than the improvement line, except with the consent of the council, which consent may be given for such period and subject to such terms and conditions as the council may deem expedient. (Sect. 33 (5).)

Power to prescribe building lines is given by Sect. 5 of the Roads Improvement Act, 1925.

### STREET PLAYGROUNDS ACT, 1938

Local authorities are empowered to make orders prohibiting or restricting the use of any specified road by vehicles during stated hours in order to make such roads safer as playgrounds for children. The Minister of Transport may, after holding a local public inquiry, revoke or alter the order. By-laws may be made with respect to roads dealt with under an order.

The local authorities are the councils of counties (other than London), county boroughs, metropolitan boroughs, boroughs, and urban districts. The Act is modified in its application to Scotland.

### ADOPTION OF PRIVATE STREETS

A **Private Street** may be defined as any highway (not being a turnpike road) and any public bridge (not being a county bridge), and any road, lane, footpath, square, court, alley, or passage, whether a thoroughfare or not, which is not a highway repairable by the inhabitants at large.

**Private Improvements.** An Urban Authority or County Council may require a street which is not repairable by the inhabitants at large to be made up to their satisfaction. There are two distinct codes under which private streets may be improved by a Highway Authority at the expense of the owners and adopted by them—

1. Under the Public Health Acts, 1875 to 1936.
2. Under the Private Street Works Act, 1892.



The Minister of Health was empowered to extend these provisions to Rural District Councils, but where the powers under (1) applied to a rural district they ceased to be so applicable under the Local Government Act, 1929, Sect. 30, and the powers under (2) above were extended to the County Councils in respect of rural districts in their areas.

### PROCEDURE UNDER THE PUBLIC HEALTH ACT, 1875

Under Sect. 150 of the Public Health Act, 1875, an Urban Authority (now styled a Borough or Urban District Council) may require a street not repairable by the inhabitants at large to be sewered, levelled, paved, lighted, etc., by the owners of the premises in the street, and, in default, the authority may execute the works and recover the expenses from the owners.

A general reference, in respect of the works required by the council to be done, to the provisions of Sect. 150 of the Public Health Act, 1875, will not suffice.

The time specified in the notice for the work to be done must be reasonable.

**Meaning of the Term "Owner."** Sect. 4 of the Public Health Act, 1875, defines the term "owner" as meaning—

The person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any person, or who would so receive the same if such land or premises were let at a rack-rent.

**Rack-rent is defined to mean—**

Rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises.

**The full net annual value is to be taken to be—**

The rent at which the property might reasonably be expected to let from year to year, free from all tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent.

This definition has been modified by Sect. 22 (b) of the Rating and Valuation Act, 1925, which came into operation on the 1st April, 1927, as "The rent at which the hereditament might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and tithe rent charge, if any, and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent."

**Liability Under Public Health Acts.** In order that premises may be liable they must "front, adjoin, or abut" on the street or part of the street to be sewered, etc.

Liability may arise in respect of strips of land adjoining a street, and in respect of the soil of a private road, but not of a highway merely leading into the street which is the subject of the street works. It is immaterial, upon the question of liability, that premises have no access to the street in question. Thus the owner of premises is not absolved from contributing to the expense of street works on the ground that there is no access from the premises to such street providing his property has a frontage.

Under Sect. 150 of the Public Health Act, 1875, power is given to the local authority to recover in a summary manner the expenses incurred by them in executing the street works from the owners in default, "according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the authority," "or (in case of dispute) by arbitration in manner provided by the Act." The expense apportioned to any premises may be recovered from any person who is the owner of such premises when the works are completed. The time within which proceedings may be taken is to be reckoned from the date of service of notice of demand.

A charge, not exceeding 5 per cent of the cost of the works may be added in respect of establishment expenses. (Sect. 292.)

By Sect. 151 of the Public Health Act, 1875, special exemption in respect of the expenses of paving, etc., a street was given in connection with churches, chapels, and other places appropriated to religious worship and churchyards and other burial grounds attached thereto.

If the notice to the owners or occupiers requiring them to do the necessary works is not complied with, the council may, if they think fit, execute the works referred to therein, and recover their expenses.

It is a condition precedent to the right of the local authority to recover expenses incurred by them in executing works under Sect. 150 of the Public Health Act, 1875, that they should have given the preliminary notice calling upon the owner or occupier of the premises in question to execute such works.

The Public Health Act, 1925, Sect. 81, provides that the Council may, if they think fit, at any time resolve to contribute the whole or a portion of the expenses of the works.

Sects. 179 to 181 of the Public Health Act, 1875, contain provisions as to the arbitrators and the procedure before them. The provisions of the Arbitration Act, 1889, also apply (see Sect. 24 thereof), except so far as such provisions are inconsistent with the provisions above referred to in the Public Health Act, 1875.

When the amount claimed from a frontage in respect of street expenses is less than £20, the dispute may be determined

at the option of either party by a Court of Summary Jurisdiction. (Public Health Act, 1875, Sect. 181.) The Court may require that a surveyor, not being the surveyor of the local authority, should report to them on the same.

As an alternative to recovering expenses incurred in respect of the execution of private street works in a summary manner the local authority may by Sect. 257 of the Public Health Act, 1875, declare the expenses so incurred to be private improvement expenses, payable by annual instalments within a period not exceeding thirty years with interest until the whole amount is paid. Such interest was not to exceed £5 per cent per annum, but, as respects expenses incurred after the commencement of the Public Health Act, 1925, it was provided by Sect. 77 thereof that the rate of interest should be 5 per cent, or such other rate as the Minister of Health might from time to time fix. This has been fixed at 4 per cent as from 1st April, 1934.

Sect. 152 of the Public Health Act, 1875, and Sect. 41 of the Public Health Acts Amendment Act, 1890, contain alternative provisions conferring on the council a discretion, subject to the veto of the owners, to declare a street which has been dealt with under Sect. 150 of the Act of 1875, a highway repairable by the inhabitants at large. Under Sect. 82 of the Public Health Act, 1925, and Sect. 19 (4) of the Public Health Acts Amendment Act, 1907, in the circumstances therein mentioned, the council may be required by the owners to make such declaration. When a street becomes a highway repairable by the inhabitants at large the council are thenceforward responsible for its paving, etc. (See Sect. 149 of the Public Health Act, 1875.)

**Liability Under Land Charges Acts.** By Sect. 257 of the Public Health Act, 1875, the sum apportioned on premises in respect of the expenses incurred by a local authority in the execution of street works is declared to be, with the interest thereon, a charge on the premises.

Under Sect. 15 (1) of the Land Charges Act, 1925, a charge acquired before or after the commencement of that Act (the 1st January, 1926) under Sects. 150 and 257 of the Public Health Act, 1875, must be registered in accordance with the rules made pursuant to the Land Charges Act, 1925, namely, the Local Land Charges Rules, 1925.

## PROCEDURE UNDER THE PRIVATE STREET WORKS ACT

The Private Street Works Act, 1892, was passed to amend the Public Health Acts with regard to private street improvement expenses. It provides an alternative method for making up and adopting private streets.

The expression "premises," if not inconsistent with the context, is defined to include "messuages, buildings, lands, easements, and hereditaments of any tenure." (Private Street Works Act, 1892, Sect. 5, Public Health Act, 1875, Sect. 4.) The primary intention of the Act is to charge the premises as distinguished from the owners thereof. (*Herne Bay Urban District Council v. Payne and Wood*, [1907] 2 K.B. 130.)

The Act is adoptive by an Urban Sanitary Authority by resolution passed at a meeting after one calendar month's notice has been given to every member of the local authority. Once adopted, it excludes for ever procedure under the Public Health Acts. A County Council may exercise these functions in respect of any rural district without any resolution or adoption.

The proceedings are as follows—

Where any private street or part of a private street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the local authority, the authority may resolve to undertake the work, and the expenses incurred shall be apportioned on the premises fronting, adjoining or abutting on such street or part of a street. The owners are not called upon to execute the works in the first place as under the Public Health Acts.

For the purpose of bringing the Act into operation the Surveyor shall prepare in accordance with Sect. 6 (2)—

(a) A specification of the works referred to in the resolution, and public notice of the works and deposit of plans must be given. In the case of a County Council the county surveyor must, in so far as the works include sewers, consult the Rural District Council.

(b) An estimate of the probable expenses of the work.

(c) A provisional apportionment of the estimated expenses.

The provisional apportionment of expenses is to state the amounts charged on the respective premises liable and the names of the respective owners, or reputed owners. It is also to state whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based. (Private Street Works Act, 1892, Sect. 6 (2) and Schedule, Part I.)

In such apportionment the authority may, if they think just, have regard to the greater or less degree of benefit given to any other property by the improvement and the amount of any work already done, and may themselves contribute towards the expenses. The premises need not have a frontage as under the Public Health Act, 1875, so long as they have access.

## PROVISION OF GULLIES IN PRIVATE STREETS

Where streets have been laid out with gullies and connections with surface-water sewers, in accordance with plans approved by the local authority, the authority cannot under the Private Street Works Act, 1892, Sect. 6, include the provision of new gullies or altering the level of existing gullies in work to be done by them, under that Act, at the expense of frontagers.

A distinction must be drawn between the system of subterranean drainage, on the one hand, and the paving of the road and matters immediately connected with it, on the other. (*East Barnet Urban District Council v. Stacey* (1939), 2 All E.R. 621; 103 J.P. 323; 87 L.J. 360.)

The local authority is given power to charge, in addition to the actual cost of the works, a commission not exceeding £5 per cent of the cost of the works in respect of surveys, superintendence, and notices. (Sect. 9 (2).)

## APPEALS

Owners may object to the proposed work within one month of the public notice, and the Act lays down the only valid objections which can be made both upon Provisional and Final Apportionment. The objections are determined by a Court of Summary Jurisdiction. The Court may quash in whole or in part, or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application of any objector or of the local authority. (Sect. 8 (1).) If the objection is fatal to the proposed works, no further expenditure may be incurred; but other objections may be dealt with by amendments and the work proceeded with.

An appeal lies to Quarter Sessions against a determination of a Court of Summary Jurisdiction under Sect. 8, in respect of objection made under Sect. 7 of the Act.

In executing street works a local authority is required to apportion the expenses on the premises fronting, adjoining or abutting on the street. In making the apportionment the local authority may direct by resolution that regard shall be had, among other things, to the degree of benefit derived by any particular premises.

The Hornchurch Urban District Council passed such a resolution. Objectors, whose objections were dismissed by the justices, appealed to quarter sessions, who upheld the objection that the works would largely benefit other than the frontagers, because they would benefit traffic between two main roads and it was unfair to throw the whole cost on the frontagers.

The Court decided that, although the local authority had a

discretion to decide in what proportion the expenses should be distributed among the frontagers, there was no authority to relieve the frontagers of any part of the total burden. (*Allen v. Hornchurch U.D.C.*, [1938] 2 K.B. 654.)

When the works have been completed and the expenses thereof ascertained, the Surveyor is to make a final apportionment by dividing the expenses in the same proportion in which the estimated expenses were divided in the original or amended provisional apportionment as the case may be. (Sect. 12 (1).)

Objections to the final apportionment are to be determined in the same manner as objections to the provisional apportionment. (Sect. 12 (3).)

Sect. 12 (1) confers upon the council the power to declare the expenses to be payable by instalments; and appears to refer to the procedure contained in the last clause of Sect. 257 of the Public Health Act, 1875.

Under Sect. 14 of the Private Street Works Act, 1892, the rate of interest was a rate not exceeding 4 per cent per annum. By Sect. 77 of the Public Health Act, 1925, such rate, as regards expenses incurred after the commencement of that Act, was altered to 5 per cent, or such other rate of interest as the Minister of Health from time to time might fix. This has been fixed at 4 per cent as from 1st April, 1934.

#### REGISTER OF CHARGES

Under Sect. 13 (2) of the Act, a register was required to be kept of charges under the Act, and of the payments made in satisfaction thereof. Now, any such charge acquired either before or after the commencement of the Land Charges Act, 1925, is to be registered in accordance with the rules made pursuant to that Act—namely, the Local Land Charges Rules, 1925. Sect. 15 (4) of the Land Charges Act, 1925, provides for a registration against the land generally in the first instance without specifying the amount; and for the cancellation of the same, after the charge is ascertained and allotted, and the registration of the specific charge as on the date on which the general charge was registered.

By Sect. 15 (2) and 11 of the Land Charges Act, 1925, it is provided that when a charge is registered under that Act, it is to "take effect as if it had been created by a deed of charge by way of legal mortgage but without prejudice to the priority of the charge."

#### APPEAL TO THE MINISTER

By Sect. 1 of the Private Street Works Act, 1892, that Act

is to be construed as one with the Public Health Acts. By Sect. 268 of the Public Health Act, 1875, it is provided that, where any person deems himself aggrieved by the decision of the council in any case in which the council are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Minister of Health, stating the grounds of his complaint. A copy of the memorial must be delivered to the council. The Minister may make such Order in the matter as to him may seem equitable, and the Order so made is to be binding and conclusive on all parties.

In the case of *Rex v. Minister of Health, ex parte Aldridge*, [1925] 2 K.B. 363, it was determined that the right of appeal given to the Minister of Health under Sect. 269 of the Public Health Act, 1875, was not entirely taken away. It was held that an appeal lay on the ground that the expenses of the works should not have been apportioned according to frontage and that the greater or less degree of benefit derived by any premises from the works should be taken into consideration. In this case Shearman, J., expressly said: "Where the justices' jurisdiction extends, the jurisdiction of the Minister of Health has gone; where the justices' jurisdiction does not extend, the jurisdiction of the Minister of Health remains."

#### COST OF STREET WORKS

On the application of the Corporation the Justices made an order substituting a new road for an old footpath. Although the new road was completed the Justices' certificate was never issued. When the Corporation proposed to charge the frontagers with maintenance charges it was claimed that as the old footpath was repairable by the inhabitants at large the maintenance of the new road could not be charged on the frontagers. The Corporation contended that the Attorney-General should have been made party to the action because the whole country would be affected by the result. This was rebutted by the Judge on the ground that the question peculiarly affected only these particular people in so far as it was not the frontagers in person but the land which they hold which is affected. As the Justices' Certificate had not been issued the new road had never been formally substituted for the old footpath and was not, therefore, repairable by the inhabitants at large. There were no peculiar features in the case and a statutory remedy was provided under the Private Street Works Act, 1892. The frontagers should await the apportionment of the charges and appeal to the Justices if they were dissatisfied.



(*Stockwell and Another v. Southgate Corporation*, 1936, 34 L.G.R. 527; [1936] 2 All E.R. 1343; 155 L.T. 437.)

#### EXEMPTION FROM LIABILITY

The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, is not to be liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto. Neither are any such expenses to be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, nor are the same subject to distress, execution, or other legal process. The proportion of expenses in respect of which an exemption is allowed under this provision is to be borne and paid by the council. (Sect. 16.)

No railway or canal company is to be deemed to be an owner or occupier for the purpose of the Act in respect of—

(a) any land of such company upon which any street wholly or partially fronts or abuts, and

(b) which at the time of the laying-out of such street is used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and has no direct communication with such street, and

(c) the expenses incurred by the council under the powers of the Act, which, but for this provision, such company would be liable to pay, are to be repaid to the council by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the Surveyor. (Sect. 22.)

Procedure under the Private Street Works Act, 1892, is preferable to that under the Public Health Act, 1875, because under the former applications may be made to a Court of Summary Jurisdiction to determine objections to the proposed work. Under the Public Health Act, 1875, any appeal that may be made to the Minister is merely against a demand for repayment of expenses, and therefore has to be deferred until the works have been done. The Minister of Health is considering the question of merging both methods of procedure.

#### DIVERSION AND STOPPING-UP OF HIGHWAYS

Highways may be diverted or stopped up when sufficient cause is shown.

Formerly a highway was stopped by means of the common law writ *ad quod damnum*. This procedure has fallen into disuse



and for all practical purposes the present law is contained in Sects. 84 to 92 of the Highway Act, 1835, and the requisites are briefly as follows—

1. A resolution of the Borough, or Urban District, or Rural District Council by order in writing to the Surveyor to apply to the justices.

2. Notices and formalities prescribed by the Act, including an application (made under the seal of the local authority) to two justices to "view."

3. A certificate of two justices after a "view" that the road is unnecessary, or the diverted road equally convenient.

4. Consent in writing of any landlord through whose land it is proposed to divert any highway.

5. In rural districts the consent of the Parish Council, which may be vetoed by the parish meeting.

6. An order of Quarter Sessions to which any party aggrieved may appeal under Sect. 88 of the Highway Act, 1835.

The Departmental Committee on the Diversion and Stopping-up of Highways, which reported in 1926, made important proposals for amending this procedure.

## BRIDGES

The making of bridges was not made part of the common duty of any public authority until 1888, when it was entrusted to the County Council. Prior to this date, however, the Statute of Bridges, 1530, required their maintenance in repair by the private owner or if a public bridge by the local authority. The Highways and Locomotive Act, 1878, empowered the county authority to contribute one-half the cost of erecting a new bridge and to take over the liability for the repair and maintenance of any bridge. When a bridge has once been erected, it became a matter of obvious public convenience that it should be maintained. It is said that at common law the liability to repair a public bridge falls upon the inhabitants of the county or of some sub-division of the county, such as a riding or hundred.

At common law, just as the inhabitants of a parish were responsible for the repair of the highways within it, so were the inhabitants of a county made responsible for the repair of the public bridges in the same. This liability was declared by Sect. 2 of the Statute of Bridges. (22 Hen. VIII., cap. 5.)

As to bridges erected after the coming into operation of the County Bridges Act, 1803, Sect. 5 of that Act added the further condition for throwing the liability to repair a bridge on the county, that the bridge should be erected "in a substantial and commodious manner under the direction or to the satisfaction

of the County Surveyor." Generally speaking, the liability of the county at common law to repair the bridge carried with it the duty of repairing the highways at the ends of the bridge. The Statute of Bridges fixed 300 ft. as the length of the highway at each end which the county was required to repair. But there is an important exception to this general rule. The Highway Act, 1835, provides that if any bridge shall after 1835 be built, that bridge shall be liable by law to be repaired by and at the expense of any county or part of a county, then, and in such cases, all highways leading to, passing over and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body, politic or corporate, who were by law, before the erection of the said bridge, bound to repair the said highways. It is provided, nevertheless, that nothing therein contained shall extend or be deemed to extend to exonerate or discharge any county or any part of a county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridges or the land arches thereof.

Since the formation of the County Councils in 1888, those public bridges known as "County Bridges" (except those within, and repairable by the councils of boroughs) are repaired by the County Councils. All other bridges which have continuously been used by the public, although the council may deem them unnecessary, must be kept in repair by the private owner on terms agreed upon. A County Council may also purchase or take over any existing bridges which are not "County Bridges." It may also erect new bridges, and repair and improve them. The expression "highways," as defined by the Highway Act, 1835, Sect. 5, includes bridges, but not county bridges, and the expression "street" in the Public Health Acts includes, if not inconsistent with the context, any public bridge (not being a county bridge).

#### **BRIDGES REPAIRABLE BY THE INHABITANTS AT LARGE**

It has been held that having regard to the fact that the word "street" as defined by Sect. 4 of the Public Health Act, 1875, included any bridge not being a county bridge, the local authority is liable for the maintenance of any bridge which may carry such a street.

#### **RAILWAY AND CANAL BRIDGES**

The law relative to the condition of railway and canal bridges has been in an uncertain state. The Bridges Act, 1929, was passed to facilitate the procedure for the reconstruction of

weak bridges in private ownership, e.g. in the ownership of railway companies, canal companies, etc. The Act provides for the systematic improvement or reconstruction of the many weak or inadequate privately owned bridges on important roads. Where a highway authority assumes an additional liability in respect of the reconstruction or improvement of such a bridge, grants can be made from the Road Fund in approved cases up to 75 per cent of the net cost falling on the highway authority, i.e. the cost falling on the authority after the deduction of any payments made by the owner of the bridge or other parties. (Road and Rail Traffic Act, 1933, Sect. 30.)

### ROAD TRAFFIC ACT, 1930

#### PROVISIONS WITH RESPECT TO THE TRANSFER OF TOLL BRIDGES AND TOLL ROADS TO LOCAL AUTHORITIES

The owner of toll rights on a road or bridge is granted by Sect. 53 full power to sell the rights to the local authority or authorities. After transfer—

(a) The bridge or road shall:

(i) In the case of a transfer to a County Council become vested in and repairable by the council as a county bridge or a county road, and

(ii) in the case of a transfer to any other council become vested in and repairable by the council as an ordinary bridge or an ordinary road,

and the provisions of all general enactments relating to bridges and roads shall become applicable to it accordingly.

(b) The tolls may be charged "for such number of years only as may be allowed by the Minister in the particular case."

(c) The consideration to be paid to any person for a compulsory transfer under this section shall, in default of agreement, be determined by an official arbitrator in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

(d) Local authorities may borrow money for the purchase, under the enactments applicable to the council as a highway authority.

(e) Any two or more councils having powers in relation to any bridge or road under this section may, subject to the approval of the Minister of Transport, enter into agreements with respect to the exercise of those powers by one council on behalf of the other or others of them.

#### PROVISIONS AS TO EXTRAORDINARY TRAFFIC

Sect. 54 repeals the previous statutory provisions on this subject.

It provides that where as respects any road it appears to the highway authority by a certificate of their surveyor that—

(a) Having regard to the average expense of repairing the road or other similar roads in the neighbourhood;

(b) extraordinary expenses have been incurred by the authority in repairing the road by reason of the damage caused by excessive weight passing along the road, or other extraordinary traffic thereon;

(c) the highway authority may recover from any person (hereinafter referred to as "the undertaker") by or in consequence of whose order the traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the Court having cognizance of the case to have been incurred by the highway authority, by reason of the damage arising from the extraordinary traffic.

If before the traffic which may cause such damage commences the undertaker admits liability in respect of such traffic,

(i) the undertaker and the highway authority may agree for the payment by the undertaker to the highway authority of a sum by way of a compensation of such liability, or

(ii) either party may require that the sum to be so paid shall be determined by arbitration; and where a sum has been so agreed or determined as aforesaid the undertaker shall be liable to pay that sum to the highway authority, and shall not be liable to proceedings for the recovery of such expenses as aforesaid.

The sums recoverable under this section shall be recoverable in the High Court, or if the claim does not exceed £500 in the County Court in the district of which the road or any part thereof is situate.

Proceedings for the recovery of any such sums shall be commenced—

(a) within twelve months of the time at which the damage has been done, or

(b) where the damage is in consequence of any particular building contract or work extending over a long period, not later than six months after completion of the contract or work. The section does not apply to the administrative county of London.

## PERMIT FOR TRAILER

A highway authority and a bridge authority may, subject to such conditions as they think fit, grant a permit in respect of any trailer specified in the permit drawn by a heavy locomotive or a light locomotive to carry weights specified in the permit,

notwithstanding that when conveying such weights the trailer does not comply with any regulations as to the weight laden of trailers, or as to the maximum weight which may be transmitted to the road or any part thereof by trailers. And where such a permit is given, it shall not, so long as the conditions, if any, attached to the permit are complied with, be an offence in the case of any such trailer to carry on that road or bridge weights authorized by the permit by reason only that the trailer when conveying them does not comply with such regulations as aforesaid. (Sect. 24 (1) Road Traffic Act, 1930, and Road Transport Vehicles (Construction and Use) Regulations, 1931.)

### **POWER OF CERTAIN AUTHORITIES AS TO REFUGES AND SUBWAYS**

Sect. 55 provides that—

(a) the council of an urban district as respects any road in their area—subject, however, in the case of a county road not vested in them, to the consent of the County Council, and

(b) a highway authority as respects any road vested in them, may for the purpose of protecting traffic along the road from danger or of making the crossing of any road less dangerous to foot passengers,

(i) erect, light, maintain, alter, and remove places of refuge in the road, and

(ii) construct, light, maintain, alter, remove, and temporarily close subways under the road for the use of foot passengers.

### **POWER TO PROHIBIT THE USE OF BRIDGES BY MOTOR VEHICLES**

Sect. 25, as amended by Sect. 30 of the Road and Rail Traffic Act, 1933, provides that—

Where the bridge authority of any bridge over which a road passes are satisfied that the bridge is insufficient to carry vehicles of which the weights or axle weights exceed certain limits, the authority may, by a conspicuous notice in the prescribed form placed in a proper position at each end of the bridge, prohibit the use of the bridge, either—

(a) by any vehicle of which the weight exceeds a maximum weight specified in the notice; or

(b) by any vehicle of which (i) the weight exceeds a maximum weight so specified, (ii) any axle weight exceeds a maximum axle weight so specified,

and any such notice may specify different maximum weights in relation to speed.

## REMOVAL OF STRUCTURES FROM HIGHWAYS

Power is given to the highway authority under the Road Traffic Act, 1930, to remove a structure which has been erected or set up on a highway otherwise than under or in pursuance of any enactment. (Sect. 56.)

## ADVANCES FROM ROAD FUND

1. It is declared by Sect. 57 that in relation to any roads for the maintenance of which he is responsible, the Minister of Transport is a highway authority for the purposes of Part II of the Development and Road Improvement Funds Act, 1909, and, accordingly, advances out of the Road Fund may be made to the Minister in his capacity of highway authority.

2. The expression "improvement of roads" in the said Part II shall include the works specified in Sect. 55 of this Act.

3. Advances may be made out of the Road Fund towards the expenses incurred by any highway authority in the erection of weigh-bridges or other machines for weighing vehicles.

The Minister is prepared to receive applications for grants towards the erection and use of weighbridges, viz. 25 per cent approved expenditure on new weighbridges and 50 per cent annual expenses of use of machines of other authorities and persons.

4. Advances may be made out of the Road Fund towards any expenses incurred by a police authority in the provision and maintenance of vehicles or equipment for use by the force in connection with the enforcement of the Act. Grants are now made for Traffic Patrols.

5. The Finance Act, 1936, provided that the revenues previously paid direct to the Road Fund should go to the Exchequer, and the Road Fund should be financed out of annual grants voted by Parliament.

## PROVISION OF FOOTPATHS AND GRASS OR OTHER MARGINS

It is declared by Sect. 58 to be the duty of a highway authority to provide wherever they shall deem it necessary or desirable for the safety or accommodation of—

(1) foot passengers—proper and sufficient footpaths by the side of roads under their control;

(2) ridden horses and driven livestock—adequate grass or other margins by the side of roads under their control.

## FINANCE

The expenses in connection with the construction and maintenance of highways, streets, and bridges (other than private

improvements) are general expenses in the case of County Councils and as part of the public health charges of the other local authorities.

## ROAD SAFETY

A special officer has been appointed in each roads division under the divisional road engineers to study conditions relative to road safety, to co-operate with local safety committees and take action to promote local interest in safety problems. All accident reports and statistics will be examined and conferences held with highway and police authorities with a view to reducing road risks and dangers.

In February, 1945, the Report was published of the Committee of the Ministry of War Transport on Road Safety.

## FINAL REPORT OF THE ROYAL COMMISSION ON LOCAL GOVERNMENT, 1929

### Part I. Functions of Local Authorities.

#### (b) OTHER QUESTIONS AFFECTING POWERS AND DUTIES OF LOCAL AUTHORITIES

##### HIGHWAY IMPROVEMENTS

(a) *Prescription of Building and Improvement Lines.* In order to ensure that a County Council should receive notification of any building proposed to be erected within a prescribed distance from the centre of any county road, the Local Authority with whom plans are deposited under building by-laws should be required to inform the County Council, and in areas where no such by-laws are in force the intending builder should be required to notify the Local Authority, who should transmit the information to the County Council.

(b) *"Give and Take" Frontage Lines.* An amendment of the law is desirable in order to facilitate agreement with frontagers on a "give and take" line when improvements are undertaken by the Local or Highway Authority. Such powers should, however, be subject to provisions—

(i) to permit a given number of inhabitants to appeal to the Justices against a proposed alienation of the part of the highway;

(ii) to safeguard the position of bodies having mains or pipes under the highway; and

(iii) to facilitate joint action if necessary where the Highway Authorities are not the Local Authority of the area.

(c) *Roads Forming the Boundaries of a Local Authority Area.* In order to remove the difficulty arising in connection with the



making up or improvement of a road forming the boundary between the areas of two local authorities, provision should be made for the authorities concerned to act jointly, and for the determination of differences in the event of their being unable to agree.

(d) *Procedure for Compulsory Acquisition of Land.* The provisions of Part II of the Housing Act, 1925, as to the compulsory acquisition of land in connection with the provision of houses for the working classes, should be made applicable for the purchase of land for the widening of existing highways.

## SCOTLAND

The main roads of Scotland were, in the first place, constructed during the seventeenth century, under the direction of General Wade, for military purposes. Many of these were found to be unsuitable for civilian traffic and Telford was called upon to prepare a scheme, which was adopted.

At the present time the roads are administered by the County Councils through the District Committees.

## IRELAND

The roads in Ireland have always been in excellent condition, and at the present time are maintained by the same class of authority as in England and Wales.

## CONSOLIDATION OF HIGHWAY LAW

The Minister of Transport and the Minister of Health are considering consolidating highway law and for that purpose in January, 1938, appointed a committee, whose terms of reference are: "To examine the existing law relating to highways, streets and bridges in England and Wales, excluding London, and to prepare one or more bills codifying the law with such amendments as may be desirable to secure simplicity, uniformity and conciseness." The sittings were suspended in April, 1939.

## POST-WAR PROGRAMME

The Government have announced the following order of priority for the post-war period—

- (1) Arrears of maintenance;
- (2) Resumption of suspended schemes;
- (3) Provision for public safety, the reconstruction of blitzed areas and new industrial development;
- (4) Removal of obstructions such as weak or narrow bridges and level crossings.
- (5) Improvements of high economic values.



## CHAPTER XIX

### RESTRICTION OF RIBBON DEVELOPMENT

#### THE RESTRICTION OF RIBBON DEVELOPMENT ACT, 1935

RIBBON development is a term specially associated with the stringing-out of buildings along important traffic routes, especially along arterial and by-pass roads newly constructed with public money for the express purpose of facilitating through transit. Building, however, has similarly developed along many other main and secondary roads. Essentially, it seems to arise when roads which are primarily routes for through traffic are taken advantage of to give access to buildings situated along them, in a way which interferes with their use for the through traffic.

The Restriction of Ribbon Development Act, 1935, is "An Act to provide for the imposition of restrictions upon development along the frontage of roads, to enable highway authorities to acquire land for the construction or improvement of roads or for preserving amenities or controlling development in the neighbourhood of roads; to extend the powers of local authorities as to the provision of accommodation for the parking of vehicles and as to the prevention of interference with traffic." The Act is thus intended to be an addition to highway law, and not, as was at one time assumed, an addition to the law of town and country planning. It was introduced in the House of Lords in May, 1935, and received the Royal Assent on the 31st July, 1935.

Ribbon development means confused and unsafe traffic and also an ugly countryside. The Act cannot solve our traffic problem, but the fact remains that ribbon development does create conditions which are dangerous from the safety point of view and ought, therefore, to be checked as quickly and as completely as possible.

It is unpleasant, undesirable, and obnoxious that the appearance of our highways and the beauty of the country which surrounded them should be impaired and very often entirely ruined, by the disorganized, unsightly, and highly dangerous method of ribbon development.

We cannot regard as possible any general legislation which will guarantee the public against losing any view of the countryside, but the Government certainly believe that it is within the

sphere of practical politics to provide for the proper and orderly development of the land adjacent to the highway. In this way, it is hoped not only to preserve the amenities as far as possible, but at the same time to prevent conditions being created which will endanger traffic on the highway and render more expensive any improvement of the highway that is necessary in the future.

The Public Health Act of 1925 had proved insufficient to keep back the building line, and the Town and Country Planning Act, 1932, had been operated slowly and, in some cases where heavy compensation claims were anticipated, reluctantly.

The private Acts of the Surrey (1931) and subsequently of Middlesex, and Essex County Councils had only been sporadically operative. The general scheme of these Acts is to enable the County Council to fix building lines along any county road (subject to compensation) and to prevent (also subject to compensation) the making of unnecessary side exits from certain main roads, actual or projected, and the erection of any buildings within 200 ft. of those roads except under proper conditions as to subsidiary service roads. The County Council can also buy land up to 220 yds. from the centre line of any county road for the purpose of road improvement or construction or the protection of amenities.

The Act supplemented these past efforts by making a new and general building line, by restricting access to roads, by making compensation conditional on proof of injurious affection, and by making the "survey section" general and applicable at once to all classified roads. There are about 44,000 miles of classified roads in England, Scotland and Northern Ireland. With regard to the remaining 130,000 miles of roads, highways authorities might make application to have any part of the highway in their area dealt with under the Act.

The Central Authority is the Minister of Transport. (Sect. 17 (1).)

The Local Authorities are the highway authorities, and arrangements are proposed for those cases in which the care and maintenance of roads are delegated to district councils by county councils.

Application to London is provided by Sect. 20—

(1) The Act does not extend to the Administrative County of London save in so far as any provisions may be applied by Orders made under this Section.

(2) The Minister may upon the application of the London County Council confer upon that Council the like powers as respects any road specified in the Order as are conferred by this Act upon other county councils.

(3) The Minister of Health may by order confer upon the

(a) Common Council of the City of London, and

(b) Councils of Metropolitan Boroughs the like powers as are conferred by Sect. 68 of the Public Health Act, 1925, upon authorities who are local authorities for the purposes of the Public Health Acts 1875 to 1932.

(4) The Minister of Health may by order confer upon the London County Council the like powers as are conferred by Sect. 12 of this Act upon authorities who are local authorities for the purposes of the Public Health Acts 1875 to 1932.

(5) Any Order made under this Section may be varied or revoked by any subsequent Order made in like manner.

### POWER TO ADOPT STANDARD WIDTHS FOR ROADS

Sect. 1 is designed to give highway authorities the power to fix standard widths for roads.

"Road" means a highway repairable by the inhabitants at large and includes any part of such a highway and any proposed road and any bridge over which such a highway passes or a proposed road is intended to pass. (Sect. 17.)

The standards are prescribed by the First Schedule to the Act and are 60 ft., 80 ft., 100 ft., 120 ft., 140 ft., and 160 ft.

(1) The standard width for a road is to be fixed by a resolution of the local authority.

(a) The standard widths to be applied to these roads would be fixed not too ambitiously, but with due regard to the possible future use of every road.

(b) If this is approved by the Minister of Transport, the resolution has to be advertised and notified in accordance with the Second Schedule to the Act, and the notifications are primarily intended for the information of other local authorities.

The following restrictions shall then be in force, viz. It shall not be lawful without the consent of the highway authority:

(a) to construct, form or lay out any means of access to or from any road; or

(b) to erect or make any building or permanent excavation, or to construct, form, or lay out, any works upon land nearer to the middle of the road than a distance equal to one-half of the standard width adopted.

(2) The Minister may by regulations prescribe other standard widths which may be adopted under this Section and upon the coming into force of any such Regulations the First Schedule to this Act shall have effect as if the standard widths prescribed by the Regulations were specified therein.

(3) The resolution may be amended by a subsequent resolution passed and approved in like manner as the former resolution, adopting as respects that road any other standard width specified in the First Schedule to this Act (either as originally enacted or as amended by Regulations made under the last foregoing subsection).

(4) The Minister, after holding a local inquiry, may by notice in writing require the authority to exercise the power conferred by this section to adopt a standard width. If the authority fail to do so within such time as may be specified in the notice the Minister may make an order adopting a standard width, and the order shall be deemed to be a resolution passed by the authority and approved by him.

The Road Standard Widths Regulations, were made by the Minister of Transport on the 29th February, 1936, authorizing a highway authority to adopt, by resolution, a standard width in connection with an embankment or cutting any width greater than 160 ft. and not more than 440 ft., being a multiple of 20 ft.

## RESTRICTION OF BUILDING DEVELOPMENT ALONG FRONTAGES OF CERTAIN ROADS

The purpose of Sect. 2 is to provide for an amenity building line and to prevent the making of an access or the erection of buildings on the road frontage. The Act aimed at enabling the highway authority to encourage ordered development, and in particular ordered group development.

"Building" includes any structure or erection of whatsoever material and in whatsoever manner constructed, and any part of a building (Sect. 17).

Sect. 2 applies automatically, without resolution, to classified roads.

"Classified road" means a road classified by the Minister under the Ministry of Transport Act, 1919, in Class I or Class II or any class declared by him to be not inferior to those classes for the purposes of the Local Government Act, 1929. (Sect. 17 (1).)

Sect. 2 provides that—

(1) As respects all roads which on the 17th May, 1935, were classified roads, it shall not be lawful without the consent of the highway authority:

(a) to construct, form, or lay out, any means of access to or from the road; or

(b) to erect or make any building upon land within 220 ft. from the middle of the road.

The Act brought this control, so far as it concerned all classified roads, into operation immediately upon the passing of the Act.

(2) The highway authority may by resolution adopt the provisions of this Section as respects any road (including proposed roads) in the same way as it may pass a resolution under Section I.

(3) No restrictions under the section will apply to agricultural buildings used mainly or exclusively for the purposes of agriculture otherwise than as a dwelling-house.

### EXEMPTIONS FOR CERTAIN WORKS REQUIRED FOR AGRICULTURAL PURPOSES AND FOR WORKS IN PROGRESS, ETC.

Sect. 3 provides that—

(1) Notwithstanding any restrictions in either of the last two sections the owner or occupier of any land affected by the restrictions may—

(a) without the consent of the highway authority,

(b) erect, make or remove any fences or gates for agricultural purposes.

(2) No restrictions in force under the last two sections shall apply to—

(i) the erection or making of any building; or permanent excavation; or

(ii) the construction, formation, or laying out of any means of access or works—

(a) begun before the date on and after which the restrictions came into force; or

(b) carried out in pursuance of a contract made before that date otherwise than in contemplation of such restrictions; or

(c) carried out in accordance with any permission granted before the date by a planning authority.

(3) A person aggrieved by a decision of the authority that he was not exempted may appeal to a court of summary jurisdiction, and within fourteen days to Quarter Sessions.

### POWER TO FENCE ROADS SUBJECT TO RESTRICTIONS

Sect. 4 gives power to the highway authority to fence roads where restrictions are in force under the foregoing provisions of the Act for the purpose of preventing access to the road except at such places as may be permitted by them.

### DEPOSIT OF PLANS SHOWING ROADS SUBJECT TO RESTRICTIONS

Sect. 5 requires the highway authority to deposit at their offices sufficient plans showing all roads as respects which they

are highway authority which are subject to restrictions in force under the foregoing provision of this Act.

### GENERAL PROVISIONS AS TO CONSENT

Sect. 7 contains general provisions as to consents which a highway authority have power to give under Sect. 1 and Sect. 2 of this Act.

### PROVISIONS AS TO APPLICATIONS FOR CONSENT AND APPLICATIONS TO DEVELOP UNDER PLANNING SCHEMES

Sect. 8 covers cases where restrictions are also contained in planning schemes. If the planning authority are not the highway authority, the planning authority shall send notice of the application to the highway authority.

### COMPENSATION FOR INJURIOUS AFFECTION UNDER SECTIONS 1 AND 2

The important subject of compensation is dealt with in Sect. 9.

This had been considered with due regard to the public interest and in fairness to the owners. Compensation will be paid only when evidence is forthcoming that the restrictions imposed by the Act are, in fact, preventing development.

Any person whose estate or interest is injuriously affected by the restrictions under either section has a right to compensation from the highway authority to be assessed in default of agreement under the Acquisition of Land (Assessment of Compensation) Act, 1919.

(a) The claimant must satisfy the arbitrator:

(i) that proposals for the development of that piece of land which at the date of the claim are immediately practicable or would have been so if the Act had not been passed, are prevented or injuriously affected by the restrictions; and

(ii) that there is a demand for such development;

(b) if within two months after the claim to compensation has been received by the highway authority:

(i) notice is served on the claimant that a Compulsory Purchase Order with respect to the piece of land is about to be submitted to the Minister for confirmation, and

(ii) the piece of land is subsequently acquired by the authority by means of such an Order.

(2) No compensation shall be payable under this Act:

(a) if similar restrictions were already in force under some other Act; or

(b) if compensation had already been paid.

(3) Where any land acquired by a highway authority after the passing of the Act is utilized for the widening of a road or the construction of a new road, no compensation will be payable in respect of adjacent land (subject to a proviso).

(4) In awarding compensation it will be the difference between the market value with and without restrictions:

Provided that—

(a) account must be taken of any modifications of the restrictions by consent of the authority;

(b) account must be taken of any benefits accruing to any land of the claimant by reason of the construction or improvement, after the coming into force of restrictions, upon land adjacent to the piece of land, of any road or carriageway or other subsidiary to the road, or by reason of the coming into force of the restrictions; and

(c) if the piece of land has, since the date of the restrictions, become separate from other land, the compensation shall not be increased by the separation.

Claims would arise and be dealt with over a period of years, and this would be more tolerable to local authorities than a mass of simultaneous claims.

### BETTERMENT

In any ordered scheme of development there should result a substantial element of betterment, and special provision was made in the Act for the off-setting of betterment against claims for compensation. This is recognized to be a just principle, and there are many precedents for it. (See Sect. 9 (4) and 13 (2).)

### CONTRAVENTIONS

Sect. 11 provides that—

(1) If any person

(a) erects excavation; or constructs, forms or lays out any means of access or works

in contravention of restrictions in force under Sect. 1 or Sect. 2 of this Act he shall without prejudice to any other proceedings which may be taken against him,

(i) be guilty of an offence and

(ii) shall be liable on summary conviction thereof to a fine not exceeding fifty pounds,

and whether or not any proceedings are taken either in respect of the offence or otherwise the highway authority may

(i) demolish the building;

(ii) fill up the excavation;



- (iii) close up the means of access; or
- (iv) remove the works

in relation to which the contravention was committed and

(v) reinstate the land, etc., in the condition in which it was before; and the expenses incurred by the authority in so doing shall be recovered summarily as a civil debt from the person by whom the contravention was committed.

(2) If the owner or occupier of any land subject to restrictions in force under Sect. 1 or 2 has committed or permits a contravention he shall be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds for every day on which the contravention occurs or continues.

### ACQUISITION OF LAND

Sect. 13 is intended to give wide power of acquisition for road purposes and for preserving amenities and controlling development.

(1) (a) Any highway authority may acquire any land within 220 yards on each side of the middle of the road, the acquisition of which is, in their opinion, necessary for the purposes of the construction or improvement of the road or of preserving the amenities of the locality and securing proper development.

(b) If they are unable to do so by agreement on terms which are in their opinion reasonable, a *Compulsory Purchase Order* made by them and confirmed by the Minister and the provisions of the Local Government Act, 1933, Sects, 161, 162, 174, 175 and 179, shall apply with respect to any such Order.

(c) The Land Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, as incorporated in the Order, shall be subject to the modifications set out in the Section.

(2) An Order confirmed under this Section may authorize a highway authority to acquire compulsorily a right in, to, or over any land which is the property of any local authority for the purposes of the construction, improvement, or enlargement of any bridge, or for the purposes of any system of road drainage.

(3) After notice to treat has been served, the authority may after giving to the owner and to the occupier of the land not less than fourteen days' notice enter on and take possession of the land or such part thereof as is specified in the notice.

The Restriction of Development (Compulsory Purchase) Regulations, 1936, were issued by the Minister of Transport on



the 1st May, 1936. *Circular No. 463 (Roads)* was issued by the Minister of Transport on the 14th May, 1936, dealing with procedure in respect of the acquisition of land and rights of the highway authority for road purposes.

## PARKING PLACES AND MEANS OF ACCESS

**Extension of Powers of Local Authorities as to Parking Places.** The Minister of Transport has taken the opportunity to include in the Act provisions to deal with certain urgent problems of road congestion in towns. Enlarged powers were given to local authorities to provide parking accommodation for vehicles in buildings and underground, and persons responsible for new places of resort might be called upon to provide accommodation for vehicles setting down and picking up persons visiting such places.

Sect. 16 provides that—

(1) The power of a local authority under Sect. 68 of the Public Health Act, 1925, shall include power to provide and maintain buildings for use as parking places and underground parking places.

(2) The powers of a local authority under the above section shall include powers to provide entrance to and egress from any parking places, also power to let parking places.

**Power to Require the Provision of Means of Entrance and Egress, etc., as a Condition of Approval of Building plans.** Sect. 17 provides—

(1) Whenever plans are required to be submitted to a local authority for the erection or alteration of any building to which this section applies, the local authority may, as a condition of their approval, require the provision and maintenance of such means of entrance and egress, and such accommodation for the loading or unloading of vehicles, or picking up and setting down of passengers, or the fuelling of vehicles as may be specified by the local authority.

(3) Any person aggrieved may appeal to a court of summary jurisdiction.

(4) The section applies only to a building whose external or containing walls contain a space of not less than 250,000 cub. ft., and to any place of public resort, station for public service vehicles, petrol filling station, or garage used or to be used in connection with any trade or business.

(6) In this section the expression "local authority" means a local authority for the purposes of the Public Health Acts, 1875 to 1936.

**SUPPLEMENTARY**

**Exercise of Functions as Regards Roads Maintained by Councils of County Districts.** Sect. 18 provides that—

(1) Where the functions of maintenance and repair of any roads are exercisable under the Local Government Act, 1929, Sect. 32, by the council of a borough or urban district the functions conferred by this Act on highway authorities shall be exercised by that council, and not by the county council.

(2) If an Order is made by the Minister under Sect. 1 (4) of this Act, it may empower the county council to exercise those powers on behalf of and at the expense of the council of the borough or urban district.

**EXPENSES**

Sect. 19 provides that—

(1) The power of the Minister of Transport to make advances under the Development and Road Improvement Funds Act, 1909, Sect. 8, shall include power to make such advances for the purpose of meeting expenditure incurred by reason of the coming into force of restrictions under Sect. 1 of this Act, and Part II of that Act shall have effect accordingly.

(2) Any expenses of a council under Sect. 1 of this Act shall be deemed to be expenses of an improvement of a road for the purposes of the Local Government Act, 1929, Sect. 33.

(3) Where an Order is made by the Minister under Sect. 13 of this Act empowering a county council to act on behalf of, and at the expense of, the council of a borough or of an urban district, the Order may apply any of the provisions of Sect. 63 of the Local Government Act, 1894, with such modifications and adaptations as appear expedient.

(4) The council of any county may contribute towards any expenses incurred by the council of a county district under this Act or under Sect. 68 of the Public Health Act, 1925, and the council of any county district may contribute towards any expenses incurred by a county council under this Act.

**THE RESTRICTION OF RIBBON DEVELOPMENT  
(TEMPORARY DEVELOPMENT) ACT, 1943**

The effect of this Act is to permit for national purposes temporary developments which would otherwise be contrary to the Act of 1935.

## CHAPTER XX

### TRAFFIC REGULATION

THE Road Traffic Bill was introduced in the House of Lords by Earl Russell on 28th November, 1929.

The Minister of Transport, in moving the Second Reading, stated that the Bill was entirely in accordance with the recommendations of the Royal Commission on the subject.

The Bill passed the Third Reading in the House of Commons in July, 1930, and received the Royal Assent, 1st August, 1930.

#### THE ROAD TRAFFIC ACT, 1930

This Act is divided into Six Parts, 123 Sections, and Five Schedules. The six Parts are as follows—

PART I. Regulation of Motor Vehicles.

PART II. Provision against Third-party Risks arising out of the use of Motor Vehicles.

PART III. Amendment of Law relating to Highways.

(This Part is dealt with in the previous chapter.)

PART IV. Regulations of Public Service Vehicles.

PART V. Running of Public Service Vehicles by Local Authorities.

Part VI. General.

The five Schedules are as follows—

FIRST. Limits of Speed.

SECOND. Provision as to Applications and Inquiries under Sect. 46.

THIRD. Traffic Areas—

Part I. Traffic Areas in England.

Part II. Traffic Areas in Scotland.

FOURTH. Provisions as to the Determination and Payment of Compensation to Officers.

FIFTH. Enactments Repealed.

#### AMENDMENTS

The Act has been amended in certain respects by the Road and Rail Traffic Act, 1933, and the Road Traffic Act, 1934, which are referred to in the appropriate parts of this chapter.

## PART I

*Regulation of Motor Vehicles*

## CLASSIFICATION OF MOTOR VEHICLES

Motor vehicles are classified by Sect. 2 under various headings. The maximum weight of vehicles in the motor-cars class and in the private passenger-carrying motor-cars class has been amended by the Motor Vehicles (Construction and Use) Regulations, 1931.

The Motor Vehicles (Construction and Use) Regulations, 1931, are intended, among other matters, to prevent any excessive weight resting upon roads. The maximum allowed for two wheels of a four wheel vehicle in line traversely is eight tons. The Court reversed the decision of the Gloucester Justices by finding that these provisions are absolute and no exception can be claimed because of the gradient or camber of the road at the place where the weight is ascertained. There is no onus on the local authority to prove that the test took place on level ground. (*Prosser v. Richings*, 1936, 34 L.G.R. 456; [1936] 2 All E.R. 1627.)

## LICENSING OF DRIVERS

The age at which a person may obtain a licence to drive a motor-cycle is raised from 14 to 16. No change is made in the age at which a person may drive an ordinary motor-car, i.e. it remains at 17, but it is provided that no one under the age of 21 may drive a heavy motor-car, motor-tractor, or locomotive. No provision was made for a definite test for drivers of motor vehicles; but see Act, 1934.

Sect. 5 of the Act provides that every applicant for the grant or renewal of a driving licence shall make a declaration whether or not he is suffering from any disease or physical disability which would be likely to cause the driving of a motor vehicle by him to be a source of danger to the public. There are severe penalties for a false declaration. Certain disabilities—e.g. extremely bad sight or liability to fits of an incapacitating nature—would be an absolute bar. An applicant who is refused a driving licence may demand a practical test in driving. Finally, there is an appeal to a Court of Summary Jurisdiction against the refusal of a driving licence.

## RATE OF SPEED

No maximum speed limit is fixed for light motor-cars and motor-cycles. (See, however, Road Traffic Act, 1934, Sect. 31.) The speed limits for the heavier types of motor vehicles are set out in the First Schedule to the Act of 1930 as provided by Sect.

10. They follow the recommendations of the Royal Commission except that the speed limit for passenger-carrying heavy motor-cars with pneumatic tyres, e.g. the modern motor-coach—has been reduced from 35 m.p.h., recommended by the Royal Commission, to 30 m.p.h. The abolition of the speed limit for light motor-cars and motor-cycles should be considered in connection with the substantially increased penalties for dangerous driving. The speed limits in the Act are lower than those commonly attained in actual practice by both motor-buses and lorries, and much less than those usual in America. It seemed to be the intention, however, to enforce them rigidly on buses, since two sections of the Act stress the provision that time-tables shall be drawn up so as to allow the service to be operated within the speed limits imposed. Sub-sec. (6) of Sect. 10 declares it to be an offence for an employer to give instructions to a driver employed by him which, if carried out, would require the driver to exceed the speed limit for a heavy vehicle, such as a lorry or motor-coach.

### RECKLESS OR DANGEROUS DRIVING

In the case of the serious offence of dangerous driving, heavy maximum penalties are fixed by Sect. 11. On a second or subsequent conviction the driver is to be disqualified from driving for a period, unless the Court for special reasons decides otherwise. Provision is made by Sect. 12 for penalties in respect of careless driving. Sect. 13 prohibits motor racing and speed trials on highways. It is unlawful for any person to drive a motor vehicle on to or upon any common land, moorland or other land of whatsoever description (not being land forming part of a road) or on any road being a bridleway or footway, and penalties are provided by Sect. 14. It is, however, declared that nothing in the section prejudices the operation of Sect. 193 of the Law of Property Act, 1925, which relates to the rights of the public over commons and waste lands. Sect. 15 provides for the punishment of persons driving motor vehicles when under the influence of drink or drugs.

By Sect. 16, pillion riders must sit astride and on a proper seat securely fixed to the cycle behind the driver's seat.

### REQUIREMENTS AS TO EMPLOYMENT OF DRIVERS AND ATTENDANTS

It is provided by Sect. 17 that in the case of heavy locomotives and light locomotives two persons shall be employed in driving or attending the locomotive whilst being driven on any highway, and where any such locomotive is drawing a trailer or trailers

on a highway one or more persons, in addition to the persons employed as aforesaid, shall be employed for the purpose of attending to the trailer or trailers at the rate of one such additional person for each trailer in excess of one.

### RESTRICTION OF HOURS

An important departure is made by limiting the time for which drivers of heavy motor vehicles may remain continuously on duty. Attention has been drawn to a number of cases where accidents have been directly attributable to fatigue on the part of the drivers and a still larger number of instances have been brought to notice of excessive hours worked by the drivers of motor-coaches and lorries.

Sect. 19 as amended by Sect. 31 of the Road and Rail Traffic Act, 1933, provides that drivers of public service passenger vehicles, among others, must not drive for any continuous period of more than five and a half hours, as well as certain other restrictions. On some bus routes, as on tramway routes, the drivers obtain a number of short rests from time to time at the terminus, but these do not count, as they are less than a half-hour, though in the aggregate they may considerably exceed that time. Municipal buses are operated on an eight-hour basis of work, and the men prefer to work at a stretch and object to any "spread-over." The new regulation means an extra half-hour or more added on to the day's work of eight hours, and requires the provision of meal reliefs, with consequent disorganization of the duty schedules and time-tables. The alternative is to divide the day's work into two periods of three and five hours respectively, allowing a break of an hour or two in between.

It is a condition of every licence granted under the Road and Rail Traffic Act, 1933, that in relation to the authorized vehicles the above requirements with respect to the time for which drivers of certain vehicles may remain continuously on duty and the hours which they have for rest are observed. (Sect. 8 (1) (c).)

### ACCIDENTS

Sect. 22 provides that if in any case, owing to the presence of a motor vehicle on a road, an accident occurs whereby damage or injury is caused to any person, vehicle, or animal (including any horse, cattle, ass, mule, sheep, pig, goat, or dog), the driver of the motor vehicle shall stop and, if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and the identification marks of the vehicle.

General powers are given to the Minister of Transport by Sect. 23 to inquire into accidents to, or caused by, motor vehicles on a road. There is a general consensus of opinion that closer inquiry should be made into the causation of road accidents with a view to their prevention.

## PARKING OF VEHICLES

To prevent obstruction and for the safety of the public, it has become necessary to provide refuges and parking grounds. (See also Restriction of Ribbon Development Act, 1935.)

## DEPARTMENTAL COMMITTEE ON ROAD TRAFFIC SIGNS

The Report of this Committee was issued in August, 1933, and recommended uniform road signs to avoid the confusion of motorists which diversity produces. The Minister of Transport immediately informed local authorities that he had accepted the findings of the Committee including the recommendations for the improvement and standardization of traffic signs and the illumination of mandatory and warning signs.

## PART II

### *Provision against Third-party Risks arising out of the Use of Motor Vehicles*

Part II deals with compulsory motor insurance and came into force on the 1st January, 1931.

A driver or owner of a motor vehicle on a road is subject to severe maximum penalties if failing to satisfy himself that whenever a motor vehicle is used on a road he is covered by a policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Act against any legal claims that may be made against him by third parties in respect of personal injury. Invalid carriages, vehicles owned by a local authority or a police authority, and Crown vehicles are excepted. The insurance company or underwriters must give the client a certificate of insurance in the prescribed form and containing such particulars as may be prescribed. The legal liability of the owner or driver of a vehicle has not been changed. It is impracticable to secure that compensation will be available in all cases where legal liability would rest on the driver or owner.

Third-party insurance is not compulsory in the case of employees of the owner for accidents arising out of and in the course of their employment; or passengers, except in the case of public service vehicles other than those of a local authority, or any



contractual liability. But any contract for the conveyance of a passenger in a public service vehicle which purports to negative or restrict liability to passengers in the event of an accident shall be void.

Instead of insurance, a car owner may provide a security complying with certain conditions, or may deposit £15,000 with the Accountant-General of the Supreme Court.

A policy of insurance (which term includes a covering note) must be issued by an authorized insurer, i.e. an assurance company or underwriter who has complied with the requirements of the Assurance Companies Act, 1909, as amended by the present Act.

Where a company carries on motor business it must deposit £15,000 with the Accountant-General in respect of that business, and where also carrying on other classes of business to which the Act applies a minimum of £35,000.

A policy of insurance will be of no effect for the purposes of the Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

The penalty for using or causing or permitting the use of a car on a road without third party insurance or security is a fine not exceeding £50 or imprisonment for a term not exceeding three months, or both, and (unless the Court for special reasons think fit to order otherwise, and without prejudice to the power of the Court to order a longer period of disqualification) disqualification for holding or obtaining a licence under Part I of the Act for a period of twelve months from the date of conviction.

On the request of a police constable any person driving a car must produce his certificate of insurance and give his name and address and the name and address of the owner of the car; also, after an accident, to a person who has reasonable grounds for requesting its production. Failure to produce the certificate is an offence, but if produced within five days at a specified police station the driver will not be convicted of an offence for non-production.

Sect. 36 (2) of the Act provided that where a third party injured by a car is to the knowledge of the insurer or owner treated at a hospital, the insurer or owner shall pay to the hospital expenses reasonably incurred up to £25 for each person treated. This provision has been extended by Sect. 33 of the Road and Rail Traffic Act, 1933, to the expense of treatment of



out-patients to a maximum of £5 and the maximum for in-patients increased to £50, and the payment to the hospital must be made though a charge is made on the patient. This enables the hospital authority to receive the whole cost from the insurer and patient and the right of the patient to make a personal claim is not prejudiced.

The part of the Act relating to compulsory motor insurance applies to Scotland.

### PART III

#### *Amendment of Law Relating to Highways*

The most important section relating to highways enables the Minister to issue directions for guidance of users of roads. This is known as the Highway Code. The Highway Code and any alterations proposed to be made in the provisions of the code on any revision thereof, shall be approved by both Houses of Parliament. Disregard of such is not an offence, but would tend to establish liability in case of accidents. Power is given to the Minister, on the application of a council to which Sect. 46 applies and after holding, if he thinks fit, a public inquiry, by order to prohibit or restrict, subject to such exceptions and conditions as to occasional user or otherwise as may be specified in the order, the driving of vehicles, or of any specified class or description of vehicles, on any specified road within the area of the council.

Power is given to the highway authority temporarily to prohibit or restrict traffic on roads.

Sect. 48 gives power to highway and bridge authorities to cause or permit traffic signs, etc., to be erected. Penalties may also be enforced for neglect of traffic directions, for leaving vehicles in dangerous positions, for stretching ropes, etc., across highways.

### PART IV

#### *Regulation of Public Service Vehicles*

Part IV of the Act is concerned entirely with the regulation of motor-buses and coaches. In America both sides of the transport industry have been considered together, but in Britain so far attention has been devoted only to the regulation of the passenger side of the industry.

### TRAFFIC AREAS AND TRAFFIC COMMISSIONERS

The establishment of traffic areas in place of the old licensing areas was the most important innovation in the Act. Some such reform of the licensing system had been urgently required.

There had been a tendency for local licensing authorities to group themselves together for the regulation of traffic in their combined areas.

Great Britain is divided into traffic areas, each under the control of three commissioners, who issue all licences and regulate all routes and services. The areas were originally fixed by the Act of 1930, but have been amended by Sect. 27 of the Road and Rail Traffic Act, 1933, which enables the Minister to make an Order under Sect. 62 of the Road Traffic Act, 1930, for varying the number or limits of traffic areas. An Order made under this section shall be laid before both Houses of Parliament, and shall be of no effect unless and until it has been approved by a resolution passed by each House of Parliament. (Act 1933, Sect. 27 (4).) The chairman, a whole-time official, is appointed for seven years by the Minister of Transport, and the other two (part-time men) are selected by the Minister from panels prepared by the County Council and the urban authorities in the particular area. Their term is for three years. The power of the Minister under Sect. 63 (7) of the Road Traffic Act, 1930, to appoint a person to act as deputy to the Chairman of the Traffic Commissioners for any traffic area in the case of illness, incapacity, or absence of the chairman may be exercised also if the Minister considers that owing to the number of applications under Part IV of the Road Traffic Act, 1930, and under Part I of the Road and Rail Traffic Act, 1933, the duties cannot be conveniently or efficiently performed by one person. (Act 1933, Sect. 28 (1).)

Upon the hearing of an appeal, an authority must act judicially, and so cannot deal with questions that are not brought before them. (*Rex v. Minister of Transport, ex parte Upminster Services, Ltd.*, [1934] 1 K.B. 277; 98 J.P. 81; 32 L.G.R. 61 (C.A).)

### ROAD SERVICE LICENCES

Sect. 72 makes provision for the granting by the Commissioners of Road Service Licences. If the Commissioners refuse to issue a licence, an appeal may be made to the Minister. Before a road service licence is granted, the Commissioners are to hear other persons affected by such licence.

For the purpose of securing, in the case of goods vehicles, their maintenance in a fit and serviceable condition and the observance of the provisions of the Road Traffic Act, 1930, and of Part I of the Road and Rail Traffic Act, 1933, the Minister shall appoint such examiners as he considers necessary. (Act 1933, Sect. 17 (1).)

A person aggrieved by the refusal of an examiner to remove a prohibition under Sect. 17 (3) of the Road and Rail Traffic Act,

1933, may make an application to any licensing authority to have the vehicle inspected by a certifying officer appointed under Sect. 69 of the Road Traffic Act, 1930. (Act 1933, Sect. 17 (7).) A certifying officer shall have the like powers and duties under Sects. 17 and 18 of the Road and Rail Traffic Act, 1933, as an examiner. (Act 1933, Sect. 19.)

The traffic areas should to a considerable extent remove the element of personal interest and make it possible to take a broader view of the problem as a whole. Adequate and efficient services should be encouraged, wasteful and unnecessary competition eliminated. Much, no doubt, will depend upon the tact and efficiency of the Commissioners, but granted the avoidance of bureaucratic officialism, the authorities should be able to effect the much needed reform of the licensing system. Difficulties may arise where a service traverses more than one traffic area, as Sect. 73 provides that a road service licence granted by the Commissioners of any traffic area shall not be valid in any other traffic area through which the route to be followed runs. Though the Act provides that a licence may be "backed" by the Commissioners of other areas for use within their district, such "backing" may be refused at the discretion of the Commissioners, who may impose any conditions they think fit in the same way as if the licence was issued in their own area. Power is given to the Commissioners by Sect. 74 of the Act to revoke or suspend licences for non-compliance with conditions.

Returns are to be made by persons operating public service vehicles, and licence holders are to supply particulars of arrangements with other persons as to the provision of passenger transport facilities.

## PART V

### *Running of Public Vehicles by Local Authorities*

This Part is dealt with in Chapter XVI.

## PART VI

### *General*

This Part of the Act makes provision as to regulations which must be laid before both Houses of Parliament as soon as may be after they are made; forgery, etc., of licences and certificates; prosecutions and penalties for offences; inquiries by Ministers (see Part III of the Road and Rail Traffic Act, 1933); expenses of Roads department; compensation for existing officers; application of fines and fees under Part I. All fines imposed in respect

of offences under Part I of the Road and Rail Traffic Act, 1933, are to be dealt with in the manner specified in Sect. 117 of the Road Traffic Act, 1930. (Act 1933, Sect. 24 (1).)

Special provisions are made as to Scotland. The Act does not extend to Northern Ireland.

## THE ROAD RAIL AND TRAFFIC ACT, 1933

The provisions of this Act affecting local authorities and not referred to in the preceding pages are as follows—

### PART I

#### *Road Traffic*

**Licensing of Goods Vehicles.** Subject to the provisions of this Part of this Act, no person shall use a goods vehicle on a road for the carriage of goods—(a) for hire or reward; or (b) for or in connection with any trade or business carried on by him, except under a licence. (Sect. 1.)

The Licensing Authority is the chairman or deputy to the Chairman of the Traffic Commissioners for any traffic area within the meaning of the Road Traffic Act, 1930. (Sect. 4.)

The classes of vehicles of local authorities which are exempt are tramcars, trolley omnibus, public service, road cleansing, road watering, refuse removal, weights and measures, sale of food and drugs, police and fire brigade, and ambulances.

**Provisions for Appeals** by persons who are aggrieved by the decision of the licensing authority to the Appeal Tribunal constituted under this Part of the Act. (Sect. 15.)

### PART II

#### *Railway Traffic*

This Part has no direct bearing on Local Government.

### PART III

#### *General*

Transport Advisory Council has been constituted for the purpose of giving advice and assistance to the Minister in connection with the discharge by him of his functions in relation to means of and facilities for transport and their co-ordination, improvement, and development.

Representative members are appointed in accordance with the Second Schedule to the Act, subject to the proviso that the representatives of the interests of labour shall be appointed after consultation with the Minister of Labour. Sect. 22 of the Ministry of Transport Act, 1919, (which provides for the appointment of a Roads Committee) shall cease to have effect.

Inquiries by Minister may be held by him for the purposes of this Act or of the Road Traffic Act, 1930 (including appeals to him under either of these Acts) as if those purposes were purposes of the Ministry of Transport Act, 1919, and Sect. 20 of that Act shall apply accordingly. The Minister may make an order as to costs. Sect. 114 of the 1930 Act, shall cease to have effect.

## ROAD TRAFFIC ACT, 1934

The Road Traffic Act, 1934, is in five parts—

Part I. Regulation of Motor Vehicles.

Part II. Amendments as to Provisions against Third-Party Risks.

Part III. Amendment of the Law as to Highways.

Part IV. Public Service Vehicles and Licences for Drivers of Heavy Goods Vehicles.

Part V. Legal Proceedings, Miscellaneous and General.

## PART I

### *Regulation of Motor Vehicles*

**Speed Limits.** Sect. I provides for the general speed limit of thirty miles per hour in built up areas. A built up area is a length of road in which a system of street lighting is maintained by lamps not more than two hundred yards apart. But (a) such a length may by a direction under Sect. 1 be deemed not to be a built up area; and (b) a length of road which does not come within the definition may by a direction under Sect. 1 be deemed to be a built up area. Such a direction may be given outside the London Traffic Area by the local authority, after consultation with the chief officer of police, and with the consent of the Minister of Transport. Orders making these declarations may be revoked in the same manner in which they are made.

"Local Authority" means (1) the Common Council of the City of London, (2) the council of a county borough, a police borough, or a non-county borough or urban district with a population at the last census of 20,000, and (3) elsewhere the County

Council. In the London Traffic Area, however, the direction will be given by the Minister after consultation with the Home Counties Traffic Advisory Committee. The Minister may increase or reduce the speed limit by Order approved by Parliament.

The Minister has a control over local authorities in the exercise of this power. For not only must a direction receive his consent, but also he has power to give a direction where the local authority has failed to do so. But he must give notice of his intention and if, within the specified period, the authority makes a representation, the Minister must hold a local inquiry. Where a direction is given, either by the local authority or by the Minister, the local authority must cause the prescribed traffic signs indicating the effect of the direction to be placed on or near the length of road affected thereby. In default of the local authorities the Minister may provide these signs and recover the cost from the local authority. "Prescribed" in this or other provisions means prescribed by regulations under Sect. 111 of the Road Traffic Act, 1930. For by Sect. 25 of this Act the Act when enacted must be read with the Act of 1930, and to the definition Sect. 121 applies to this Act.

The special speed limits prescribed by Sect. 10 of the Act of 1930 are modified by Sect. 2 and the 1st Schedule to the Act. This does not affect local authorities except as owners of such vehicles. But it is worth noticing that under Sect. 3 these limits will not apply to any vehicle when it is being used for fire brigade, ambulance, or police purposes, if the observance of these provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.

Various penalties are imposed for exceeding the speed limit, and the maximum term of imprisonment for reckless and dangerous driving is increased from six months to two years.

It is also an offence to sell or alter a vehicle which contravenes the regulations as to construction.

Sect. 5 imposes a driving test for all new holders of licences. A person who at some time before the 1st April, 1934, held a driving licence need not pass such a test. Any other person has to "satisfy the licensing authority" that he has at some time passed the prescribed test of competence to drive. The nature of the test is left to be covered by regulations.

## PART II

### *Provisions against Third-party Risks*

Part II contains additional provisions regarding claims by insurers and payment to a doctor or hospital for emergency medical assistance. Any person first receiving such treatment

at a hospital may be required to pay a fee not exceeding 12s. 6d. to the hospital authority.

### PART III

#### *Amendments of the Law as to Highways*

Provision is made for foot-passenger crossings. These will be established in accordance with a scheme proposed by the Borough Council; in an urban district by the Urban District Council; and in the rural district by the County Council. The appropriate council must consult the chief officer of police, and then submit the scheme to the Minister of Transport, who may approve with or without modifications. The council must then execute any works which may be necessary; and if they default the Minister may execute the works and recover the cost from the council. For such crossings the Minister may make regulations as to the precedence of vehicles and foot-passengers and to the movement of traffic in the vicinity; and he may also make regulations as to the limits of a crossing and the erection of traffic signs. Sect. 15 applies to highway authorities.

Road guard rails were provided first at Wolverhampton in 1934. These guide pedestrians to correct crossing places, prevent them stepping off the pavement unexpectedly to vehicular traffic and warn drivers that particular care is necessary at that point.

Road illumination may be provided and the expense charged as for general county purposes, in the event of the lighting authority failing to provide an adequate service. Any district council having made adequate provision for lighting county roads in the district are entitled to receive from the county council the amount raised in the district by the county council in respect of such lighting expenditure.

The cost of removing an abandoned vehicle from the highway may be recovered from the owner by the police.

### PART IV

#### *Public Service Vehicles and Licences of Drivers of Heavy Goods Vehicles*

Part IV has no application to local authorities as such, though the provisions will be of importance to those members of local authorities who are Traffic Commissioners.

Local authorities may make reasonable charges for parking places, except in streets. Any local Act provisions with respect to property left on vehicles are repealed and the Lost Property Regulations, 1933, apply.

## PART V

*Legal Proceedings, Miscellaneous and General*

Part V provides that Sect. 116 of the Act of 1930, which makes provision for compensation of officers of local authorities who suffer loss as a result of the Act of 1930, is now restricted to loss suffered under Sect. 122 of that Act. That is, officers will not be entitled to compensation except where the loss is due to the repeal of enactments and provisions relating to the licensing of public service vehicles by local authorities.

The power for making advances from the Road Fund towards the expenses of erecting machines for weighing vehicles is extended to their maintenance and operation. Grants are authorized towards the expenses of local authorities in erecting, maintaining, altering, or removing traffic signs.

Other problems connected with street traffic include the provision of one-way streets, unilateral waiting, closing of appropriate streets for traffic, the provision of tram and bus stops at the most suitable places, and the teaching of school children as to crossing streets.

**THE ROAD TRAFFIC (DRIVING LICENCES) ACT, 1936**

This Act exempts steersman of motor vehicles subject to speed limits of 5 miles per hour when acting under licensed drivers. Non-licensed drivers may be employed in connection with heavy goods vehicles. Provisional (3 months) licences facilitate learning with a view to passing the driving test. Licences may be limited to specified classes of vehicles under regulations made by the Minister.

**HIGHWAY DEVELOPMENT SURVEY (GREATER LONDON)**

Vast proposals for the extension and re-organization of London's road system over an area of 2,000 square miles are made by Sir Charles Bressey, who had Sir Edwin Lutyens as his consultant, in the report, issued on the 7th May, 1938, of the London Highway Development Survey, on which they had been working for three years. The Report is dealt with in the 1938 Supplement to the *Law of Housing and Planning*, Fourth Edition (Pitman).



## SECTION V

### EDUCATION AND MORAL IMPROVEMENT

#### CHAPTER XXI

##### EDUCATION

EDUCATION is that function in life which will develop the faculties of the individual in such a way that he will not only be better able to fulfil his allotted task as an ordinary tradesman or professional man, but will also become best fitted to serve the community in which he dwells, and to render that service which will enable him to leave the world better than he found it. Education makes or should make the individual as an individual realize his highest potentialities. Briefly, it may be said to be a preparation for complete living.

The Departmental Committee, appointed by the President of the Board of Education to inquire into the position of English in the educational system of England, which reported in 1921, defined Education as "Guidance in the acquiring of experience."

In our modern civilization, which is developing along industrial and commercial lines, we must recognize that no traditional notions of education may be regarded as permanent. If culture is to be the result of the machine age, we must recognize that that age possesses a culture of its own. We must not fear, therefore, continually to revise our educational philosophy.

Education may be justified on moral, economic, and social grounds: on moral grounds because it acts as a deterrent against vice and crime; on economic grounds because knowledge increases skill and ability, and should result in increased output and wealth; on social grounds because so far as it is consistent with natural ability it tends towards equality of opportunity.

#### HISTORY OF EDUCATION

Prior to the eighteenth century the Church was almost entirely responsible for education. Prior to the Renaissance there were three types of schools which developed in this country, viz. monastic, grammar, and gild schools. Each of the cathedral establishments had its school, in which not only the clergy but the laity received instruction. Some of these schools are still in existence and are attended by the boy choristers. The grammar

schools, which spread rapidly over the country, took their form from the cathedral schools. They originated in bequests of philanthropists. They were followed by the public schools, such as Wantage; and gild schools, such as Merchant Taylors.

The invention of printing in the fifteenth century, and the Reformation in the sixteenth century, had considerable influence in regard to the encouragement of learning. The period of the Renaissance of the early part of the sixteenth century led to the intellectual movements which those who took a prominent part in the Reformation were hopeful would secure for education a large share of the spoils of the monasteries. But these fell into other hands. It was not until after the Reformation had made itself fully felt that the need of primary education for the poor was recognized. The grammar school had so far fulfilled the need, but its operations were necessarily limited, and these schools were gradually appropriated by the middle and upper classes, by whom the poor were elbowed aside. The Church was naturally anxious to retain its hold on the mass of the nation, and by the Canons of 1604 secured the control of education.

During the Stuart Period there was a steady reaction, and intellectually the seventeenth century was probably the darkest period in English history.

In 1699 commenced a new era with the formation of the Society for Promoting Christian Knowledge, with a three-fold object: the education of the poor at home; the reclaiming of those who had erred from Christianity (this was the origin of Home Missions); and the religious teaching in the Plantations, as the Colonies were called (this was the origin of Foreign Missions).

In 1703 John Wesley was born, who, together with Whitefield and others, awakened the moral conscience of the country from the lethargy into which it had fallen during the previous century, and which found expression in the development of Sunday Schools and voluntary day schools.

In 1769 Hannah Ball started a Sunday School at High Wycombe, which was probably the first in the country. This was followed in 1775 by James Hay, who opened a school at Little Lever, in Lancashire. In 1780 Robert Raikes, who was born in Gloucester in 1736, opened a Sunday School in that town after many years' devoted attention to the prisoners in the two gaols of his native city. Four years later he wrote an account of the movement in John Wesley's *Arminian Magazine*. These Sunday Schools were secular as well as religious, and many of them consisted of adult scholars and constituted the basis for our modern development in Adult Education. They are aptly described by Charles Dickens in *Great Expectations*.

Schools rapidly developed, and by the early part of the nineteenth century there were 250,000 scholars, principally adults who worked in factories. It was an outward indication of an inward craving for light and learning on the part of the general body of the community. The elder Sir Robert Peel secured the passing of an Act in 1802 which restricted children's labour in factories, and required that reading, writing, and arithmetic should be taught to them during a part of each day. This was the beginning of the factory legislation which became so urgently necessary on the growth of manufactures, and which was pushed forward chiefly by the exertions of Lord Shaftesbury.

The most notable effort made to further popular education was the introduction of the monitorial system, the origin of which was claimed by Andrew Bell and Joseph Lancaster towards the close of the eighteenth century.

In 1808 the Nonconformist followers of Joseph Lancaster founded the Royal Lancastrian Society, later known as the British and Foreign Schools Society. Lancaster was unsuccessful and became bankrupt. He sailed for America, where he died in poverty. The State Church became alarmed at the growth of Lancaster's Nonconformist Schools. In 1811 was established the National Society for the Education of Children according to the Principles of the Church of England, commonly referred to as the National Society, which took over the schools inaugurated by Andrew Bell. In 1818 John Pounds established a ragged school at Portsmouth. In 1836 the Home and Colonial Society was formed, which provided by voluntary means still more schools for the poor.

While these voluntary agencies were taking shape the attention of the legislature was first turned to the work of education. In 1807 Mr. Whitbread, the Whig leader, introduced a Bill for the establishment of parochial schools through the agency of local vestries, who were to be empowered to levy a rate for the purpose. The Bill passed the House of Commons but was rejected by the House of Lords at the instance of the Archbishop of Canterbury. In 1816 Brougham obtained a Select Committee for Inquiry into the Education of the Poor in the Metropolis. In 1820 Brougham introduced on the basis of his previous inquiries an Education Bill which advocated the provision of public funds for denominational schools. It met with a storm of opposition which ensured its defeat. In 1828 Thomas Arnold went to Rugby, and created a new public school spirit, which is well illustrated in Judge Tom Hughes's well-known work, *Tom Brown's Schooldays*.

State support came first in the form of a Minute dated 30th

August, 1833, of the Lords Commissioners of the Treasury, making a grant of £20,000 towards funds for the erection of school houses, not including residences of teachers. The amount was applied in aiding local effort to an amount of one-half cost of buildings through the British and Foreign Schools Society and the National Society, while in Scotland the fund was administered by the Minister and Kirk Session of each parish.

By 1839 the grant, which had become annual, had increased to £30,000. In the same year the Education Department was constituted by an Order in Council, whereby a Special Committee of the Privy Council was established to administer the grant. The Secretary of the Committee was Sir James Kay-Shuttleworth. At the same time inspectors of schools were appointed. In 1846 the first Grants were made in aid of salaries, and in 1853 the first Capitation Grants.

The Treasury Minutes continued until 1856, when an Act of Parliament established the office of Vice-President of the Committee of Privy Council on Education, with the result that the administration of grants came under the control of a minister responsible to Parliament.

The period from 1856 to 1870 was one of considerable political activity. In 1858 a Royal Commission was appointed, with the Duke of Newcastle as Chairman, to inquire into "the state of popular education in England, and as to the measures required for the extension" of "sound and cheap elementary instruction for all classes of the people." Their report was published in 1861, and although optimistic in tone, it revealed a state of things far from satisfactory. Less than two-thirds of the estimated number of children in England and Wales were returned as attending school at all, though their attendance must often have been merely nominal. It was for this Commission that Matthew Arnold reported on the elementary school systems of France, Holland, and Switzerland, and first raised the cry "Organize your Secondary Education."

No legislation was attempted at the time, but by a Minute dated 29th July, 1861, the Right Hon. Robert Lowe, afterwards Lord Sherbrooke, and at that time Vice-President of the Committee, published a Revised Code of all the Minutes issued by the Education Department which had been codified for the first time in the preceding year. This introduced the principle of "payment by results," which by making grants to specific subjects caused the neglect of others. From this time the Code was reprinted every year, and no alteration involving expenditure was adopted until it had been submitted to Parliament.

The period which elapsed served to show the limits within

which success was possible, without some direct intervention by the legislature. By common consent the time for a settlement had come, and the two conflicting interests had ranged themselves in the National Education League of Birmingham, under the Rev. R. W. Dale, D.D., Joseph Chamberlain, and Jesse Collings, and the National Education Union of Manchester, under Cowper Temple. It was at this time that Mr. Forster introduced the Bill which became the Elementary Education Act, 1870.

### ELEMENTARY EDUCATION ACT, 1870, etc.

The Act provided for the appointment of Commissioners to inquire into the condition of education in School Districts. These districts were created by adopting the boundaries of the boroughs and of the civil parishes outside the boroughs. Where there existed an educational deficiency, School Boards were to be elected in towns by the burgesses and elsewhere by the rate-payers. Election was to be by ballot, the success of which led to the passing of the Ballot Act, 1872. The School Board was a corporate body with perpetual succession and a common seal. Where Board Schools were erected the deficiency in their maintenance was to be met by a rate obtained by precepts issued in boroughs on the Borough Council, and in rural areas was to be collected as part of the Poor Rate.

The School Attendance Committee Act, 1876, provided for the establishment of committees wherever a School Board did not exist. The machinery was completed in 1880 by the Compulsory By-laws Act, which required all educational authorities to pass compulsory by-laws relative to school attendance. In 1891 the Abolition of Fees Act provided for an additional grant of 10s. per scholar in average attendance for all free school accommodation.

Meanwhile the School Boards had made great progress, especially as a result of the erection of schools which were in many ways superior to the voluntary schools in equipment and building. In 1897 the Voluntary Schools Act gave an additional grant of 5s. in respect of the scholars in attendance at voluntary schools, while at the same time these schools were exempted from assessment for rates.

The Board of Education Act, 1899, reconstituted the central authority. The same year Thomas Barclay Cockerton, a District Auditor of the Local Government Board, surcharged the London School Board in respect of expenditure in supplying, at the cost of the rates, advanced instruction under the Directory of the Science and Art Department, and beyond the scope of the Elementary School Code. His ruling was upheld by the Queen's Bench Division of the High Court of Justice and by the Court of

Appeal. The decision caused a deadlock in regard to educational progress, for it upset many of the arrangements under which School Boards were providing higher education in "higher grade schools," evening schools, and classes for adults. In 1900 the system of payment of grants by results was superseded by a system of Block Grants. An Act of 1901 to meet the Cockerton judgment, which affected other places besides London, paved the way for the legislation which followed.

### THE EDUCATION ACTS, 1870 to 1901

The principles established by the Education Acts, 1870 to 1901, may be said to be—

(a) Compulsory attendance. All children at schools under a representative local authority.

(b) Education is a quasi local service administered by an *ad hoc* local authority and supervised by a Central Department of the Government.

(c) Schools managed by local authorities should be supported by rates and taxes.

(d) Voluntary schools should be supported by taxes but not by rates.

(e) Religious dogmas should not be taught in schools controlled and supported by ratepayers.

(f) In voluntary schools which are supported by taxpayers, denominational religion may be taught, but under a conscience clause.

### THE EDUCATION ACT, 1902

Board schools did good work in their time. They brought an elementary school within the reach of the great majority of the child population. A reaction had set in, however, against the *ad hoc* form of administration and the Act of 1902 abolished the 2,564 school boards and 787 school attendance committees, and transferred their functions to new local education authorities. Those authorities were of two types, one for higher education and one for elementary. For higher education the councils of counties and county boroughs were chosen. For elementary education they were the councils of county boroughs, non-county boroughs with a population of over 10,000 (1901 census), urban districts with a population of over 20,000, and the councils of counties for their areas outside those boroughs and urban districts. As provisions with regard to those boroughs and urban districts were contained in Part III of the Act of 1902, such authorities became known as Part III authorities. Newly-created boroughs and urban districts with the requisite populations

secured the same right, but the Education (Local Authorities) Act, 1931, prevented the exercise of this power unless expressly granted by a subsequent Act of Parliament.

The Act provided for the maintenance, as distinct from the provision, of schools established by voluntary bodies out of local rates in addition to Government grants. It recognized a dual system of school provision by (a) provided schools established by the local authority and (b) non-provided schools established by voluntary bodies—usually the religious denominations, Anglican, Roman Catholic, Methodist, and Jewish. Each school has a body of managers and in the case of the non-provided schools those representing the denominational interests, known as foundation managers, predominate. Provision was made for schools to be grouped under one body of managers and a great deal of re-organization has proceeded along the lines of grouping schools and making one a primary and the other a senior school.

### EDUCATION ACT, 1918

The fundamental purpose of this Act was "the progressive development and comprehensive organization of education available for all persons capable of profiting thereby." Previously our educational system had merely supplemented voluntary effort, but this Act was intended to establish a system of national education. The "half-time system," under which children worked during one part of the day and went to school during the other part, was abolished. Provision was made for the establishment of nursery schools for children between two and five years, and the financial system of Government grant payments was reorganized. Medical inspection was extended to secondary schools and provision made for social and physical instruction. Perhaps the outstanding feature of the Act was the provision made for the establishment of Day Continuation Schools, but the practical difficulties in the way caused the provision to be postponed.

### EDUCATION ACT, 1921

The history of education between 1902 and 1921 consists mainly of the progress in the development of "special services."

In 1906 came the provision of meals, in 1907 the provision of play centres and school camps and the duty to medically inspect school children, in 1909 the provision of medical treatment, in 1910 vocational guidance, and in 1913 special treatment for mentally deficient children such as had already been established in 1893 and 1899 for blind, deaf, defective, and epileptic scholars.



The Education Act, 1921, consolidated the greater part of the legislation from 1870 and constituted one of the finest examples of Parliamentary draftsmanship on the Statute Book. It continued the Consultative Committee established by the Board of Education Act, 1899, to advise the Board on any matter referred to them by the Board.

It was becoming increasingly recognized that many schools could not be adapted to the needs of modern educational standards and, in view of the proposals being made to raise the school age, it was obvious that many schools were inefficient. In 1925 the Board of Education compiled a "Black List" of such schools with a view to having them reconstructed or closed and replaced. The Education Act, 1936, made provision for the raising of the school age to 15 in September, 1939. Local education authorities were authorized to make building grants to voluntary bodies to assist them to make provision for the new school places required and the re-organization of their schools to meet the needs of advanced education. The buildings had to be completed by September, 1940. The outbreak of war in 1939 placed an embargo on these building programmes and the raising of the school age was postponed.

#### THE PHYSICAL TRAINING AND RECREATION ACT, 1937

Although there was never any desire to copy the methods of the Hitler Youth Movement in this country, there is little doubt that the attention paid to the organization of the younger generation on the Continent awakened public opinion in this country to this aspect of training, which had not received the attention it deserved. The Public Health Act, 1875, gave powers to public health authorities to lay out and maintain pleasure grounds whether provided by themselves or not. The Public Health Acts Amendment Act, 1907, Part VI, authorizes them to set apart such places for organized games and provide any apparatus for the purpose. The Public Health Act, 1925, allows a reasonable charge to be made for such games. The Education Act, 1921, went much further and enabled local education authorities to provide and maintain camps, equipment for physical training, and similar facilities for combined social and physical training during the day or evening. The Housing Act, 1936, Part V, empowers housing authorities to provide and maintain recreation grounds for the benefit of their tenants subject to the consent of the Minister of Health. The Education Act, 1918, Sect. 17, authorized local education authorities to provide or maintain holiday or school camps (especially for young persons attending continuation schools), centres and equipment for physical



training, swimming baths and other facilities for social and physical training.

The Physical Training and Recreation Act, 1937, gave statutory effect to those parts of the Government's proposals for improving the national physique and extending and developing physical training and recreation which cannot be carried out by administrative methods. Previously, the provision of these facilities for the bulk of the population had been hampered by the absence of co-ordinated effort and lack of sufficient funds. The Act endeavours to co-ordinate voluntary effort and bring it into co-operation with public effort through both public health and education authorities. The Act has been considerably amended by the Education Act, 1944. The National Advisory Council and the local committees, together with the National Grants Committee, have been abolished and the work transferred to the local education authorities and the Minister of Education.

**Youth Advisory Council.** In 1942, the President of the Board of Education appointed a Youth Advisory Council under the chairmanship of Mr. J. F. Wolfenden, Headmaster of Uppingham. For the first time a single body functions containing representatives of all types of work among youths both professional and voluntary. Every local authority has a Youth Service Committee and this Council becomes the central body for co-ordinating the various activities of those engaged in this work.

### THE EDUCATION ACT, 1944

No more impressive demonstration of the great significance ascribed to education could have been provided than the phenomenon of a nation engaged in a life or death struggle with a brutal adversary and during the fifth year of the greatest war of history turning its attention to the problem of the progressive development of its system for the education of its people. The groundwork had been provided by intensive inquiries over many years and following a description of the machinery provided there is an account of the Reports of several Committees which have considered various problems and made recommendations which have been of inestimable value in preparing the way for legislative action. A White Paper entitled "Educational Reconstruction" was issued in July, 1943, explaining the proposals (Cmd. 6458). The scope of those proposals and the hopes of those responsible for promoting the measure may be realized from the words of the Earl of Selbourne in the House of Lords on the 5th August, 1943, who said: "When this great conception has been realized this country will possess a system of education

superior to that existing in any country in the world at present and beyond the wildest dreams of the pioneers of education."

All previous enactments relating to education are superseded. The Acts of 1921, 1936 and 1937 are wholly repealed. The principles of the Act may be summarized as follows—

1. Reconstruction of the national system of education in order to make adequate provision for all forms of education—primary, secondary and further education.
2. Provision of nursery schools wherever needed.
3. Raising of the school age to 15 immediately and ultimately to 16.
4. Secondary education for all without payment of fees.
5. Religious instruction to be an essential element in education supplied according to an agreed syllabus.
6. Compulsory part-time continuation education up to 18.
7. Adequate and co-ordinated provision of technical and adult education.
8. Registration and inspection of all independent schools.

#### Parts and Schedules of Act.

The Act is divided into five parts as follows—

- I. Central Administration.
- II. The Statutory System of Education.
- III. Independent Schools.
- IV. Miscellaneous; Administration, and Financial Provisions.
- V. Supplemental Provisions.

There are nine Schedules—

First: Local Administration.

Second: Transfer to a local education authority of an interest in the premises of an auxiliary school.

Third: Special agreements in respect of certain auxiliary schools.

Fourth: Meetings and proceedings of managers and governors.

Fifth: Supplemental provisions as to powers of courts for enforcing school attendance.

Sixth: Constitution of independent school tribunals.

Seventh: Procedure for preparing and bringing into operation an agreed syllabus of religious instruction.

Eighth: Amendment of Enactments.

Ninth: Enactments repealed.

Parts I and V operated with the passing of the Act. Parts II and IV from the 1st April, 1945, and Part III from a date to be fixed by Order in Council.

**Central Administration.** The President of the Board of Education has been given the status of a Minister and the Board that of a Ministry. The Minister is effectively empowered to secure the progressive development of a national system of education in the words: "To promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area."

The Consultative Committee is replaced by two Central Advisory Councils, one for England and one for Wales, "to advise the Minister upon such matters connected with educational theory and practice as they think fit and upon any questions referred to them by him." It will be observed that, unlike the Committee they displace, their work will not be confined to dealing with matters referred to them only.

**The Statutory System of Education.** The new local authorities will be the councils of counties and county boroughs only. Although the Part III authorities are abolished, county councils may delegate their functions to "divisional educational executives" representing one or more county districts. Schemes for this purpose had to be submitted to the Minister. Councils of boroughs and urban districts with populations not less than 60,000 (1931 census) or not less than 7,000 elementary school pupils, were authorized to prepare their own schemes of delegation. Divisional Educational Executives will be financed by the county council. Educational properties held by former Part III authorities are transferred to the county council and their educational officers similarly transferred. Provision was made for redundant officers to be compensated. In place of the former by-laws of local authorities with regard to school attendance, which cease to operate, there is a statutory obligation on parents to cause their children to be educated. The date for raising the school age to 15 was to be the 1st April, 1945, but the Minister was empowered to postpone its enforcement if exceptional circumstances make it impossible to provide the necessary school places or teachers in time. This delay is limited to two years at the most. The raising of the age to 16 will be accomplished by an Order in Council as soon as the Minister is satisfied that the time is opportune. The Compulsory School Age (Postponement) Order, 1944 (S.R.O. 979), defers the raising of the school age to 15 until a further order is issued.

**Education Committees.** Every local education authority must set up an education committee or committees for the efficient

discharge of their duties. Two or more authorities may, with approval of the Minister, combine to establish a joint education committee for consideration of questions of common interest. The Minister may by order enforce the establishment of a joint committee. Persons experienced in education or acquainted with local educational conditions must be included on the education committee, but at least a majority of every such committee must be members of the local authority. Education committees may appoint such sub-committees as they desire.

**Duties of Local Education Authorities.** A statutory obligation is placed on local authorities to make adequate provision for primary, secondary and further education in their areas and to have regard to the establishment of separate schools for the three types of education, together with nursery schools or classes for children under five, special educational treatment for those suffering in mind or body, and boarding schools or board and lodgings for scholars whose circumstances make such provision expedient. The provision of special educational treatment is now extended to all maladjusted children, not only defective and epileptic pupils, and it is not necessary for a handicapped child to be certified as a defective to receive special educational treatment. The age of compulsory attendance for special school pupils has been lowered from 7 to 5. Government grants will be available for assisting voluntary bodies to establish more special schools.

**County and Voluntary Schools.** The old terms "provided" and "non-provided" schools are discontinued. Primary and secondary schools maintained by the local education authority, not being nursery or special schools, are known as "county" schools. Schools provided otherwise than by the local authority are known as "voluntary" schools. These are of three types—"controlled," "aided," and "special agreement" schools. Controlled schools are those where the managers are unable or unwilling to meet at least one-half of the cost of the alterations and improvements necessary to bring the school up to the standard required by the Act. The local authority will take over financial responsibility and appoint two-thirds of the managers and appoint and dismiss teachers subject only to the right of the managers to be consulted as to the appointment of the head teacher. The foundation managers will control the appointment of "reserved" teachers for denominational religious instruction which must be allowed on two occasions each week. Aided schools are those where the managers are able and willing to meet one-half the cost involved. The Exchequer will meet the other half by a direct grant. The managers will retain control of the appointment and

dismissal of all teachers and the supplying of denominational religious instruction subject to the rights of parents who so desire to have syllabus instructions for their children. Special agreement schools are those already built under assistance provided under the Education Act, 1936. Religious instruction will be in accordance with the trust deed and under the control of the managers. Independent schools are those, generally known as private schools, where full-time education is provided for five or more pupils of compulsory school age (whether or not such education is also provided for pupils under or over that age) not being a school maintained by a local education authority or a school in respect of which grants are made by the Minister to the proprietor of the school.

**Secondary Education.** Primary school pupils will pass at the age of eleven to some form of secondary education suitable to their age, ability and aptitude. Secondary schools are of three types—grammar, technical and modern schools. Grammar schools will provide systematic study of an academic character without regard to particular vocational requirements. Technical schools will provide a curriculum closely, although not wholly, directed to the requirements of a particular kind of occupation, though always with outlook and method bounded by a near horizon clearly envisaged. Modern schools provide a balanced training of mind and body and a correlated approach to the humanities, natural science and the arts, comprising an equipment varied enough to enable pupils to take up the work of life.

For the other two forms of secondary education, local education authorities were required to draw up schemes of administration for submission and approval by the Minister of Education.

There had to be prior consultations with the universities, with educational associations and the authorities of neighbouring areas. It is the duty of the local education authorities to put these schemes into operation by such stages as the Minister determines. It is hoped that this will open up the way to a much needed extension of facilities for higher education and secure that proper provision is made to carry on those wider interests which have been stimulated among men and women who served in the Forces during the war.

**Further Education.** The third form of education, viz. "further education," is intended to supply leisure-time occupation in such organized cultural training and recreative activities as are suited to the requirements of persons over compulsory school age who are able and willing to profit by the facilities provided for that purpose.

The former conception of the responsibility of local education

authorities being confined to elementary and higher education has been replaced by the recognition of the need for their responsibility for meeting the need for a continuous programme of education throughout life. This acknowledgment of the claims of "further" education provides the greatest opportunity for an advance in educational development. The provision of further education will take three forms: (a) County Colleges; (b) education in technical, commercial, and art subjects; and (c) leisure-time instruction for those over compulsory school age.

Although the public authorities are undoubtedly best suited for the major part of the programme of complete education, needs are so varied in the case of adult education that a stultified or stereotyped provision may result unless full scope is allowed to the voluntary agencies interested in adult education to assist to the full in the provision of facilities. The importance of this branch of further education cannot be overstressed. It is possible to raise the school leaving age, provide secondary education for all adolescents, train apprentices for wage or profit earners and yet lose the substance of things hoped for—not merely greater commercial or industrial efficiency, but the development of the self-consciousness, better judgment and improved culture of the whole community. Education has ceased to be a case for the educationist and the expert; it is bound up with the fundamentals of democratic life and affects the lives of the people both young and old. Not only is more education needed; it is imperative that there shall be education of the right sort and for all classes and ages. The young citizens must be induced to follow up the training of childhood and adolescence with voluntary self-chosen training in after life. The teaching of sociology in all aspects is vitally important in this connection. There must be ample provision for training in citizenship. In a free democracy it is essential that the people become interested in the acquisition of knowledge which will help them to understand the nature of government and its problems.

**School Managers.** Primary schools are governed directly by a body of managers and secondary schools by a body of governors.

(a) **COUNTY PRIMARY SCHOOLS.** (i) If there is a minor authority for the area, as there is in a county area outside a county borough, there must be at least six managers, two-thirds appointed by the local education authority and one-third by the minor authority. The minor authority is the council of the parish, district, or non-county borough served by the school.

(ii) If there is no minor authority, as in a county borough, the local education authority appoints such managers as they determine necessary.

(b) **VOLUNTARY PRIMARY SCHOOLS.** Not less than six managers must be appointed.

(i) *Aided or Special Agreement Schools.* Two-thirds are foundation managers appointed according to the trust deed of the school. If there is a minor authority, not less than one-third or more than one-half of the balance is appointed by the minor authority and the remainder by the local education authority. If there is no minor authority, one-third is appointed by the local education authority.

(ii) *Controlled Schools.* One-third are foundation managers and the others are appointed in the same proportions as for other voluntary schools.

With regard to secondary school governors, in the case of county secondary schools the local education authority appoint the governors to such numbers as they determine. In the case of an auxiliary secondary school the Minister of Education determines the appointments of governors. In the case of controlled secondary schools one-third of the governors are foundation governors and in the case of aided or special agreement secondary schools two-thirds are foundation governors.

Schools may be grouped under one body of managers or governors.

Managers and governors are required to give two years' notice to the local education authority of their decision to close a school.

Any ten or more local government electors may object to proposals to provide a new school or close an existing school.

**County Colleges.** The provision of County Colleges will be uniformly administered under Government Regulations. From a date to be fixed by the Minister by means of an Order in Council, young people up to the age of 18 and not in full-time school attendance will be required to attend a college. The required attendance will be one whole day or two half-days a week for 44 weeks each year, or continued attendance for eight weeks or two periods of four weeks. Young people affected will be required to keep the local education authority informed of their address. A similar obligation is placed on employers to inform the local authority when such young people enter or leave their employment. The time spent in attendance at a college will be treated as hours of employment for regulations affecting both hours of employment and overtime rates of pay.

**Youth Service.** The Minister is authorized to make regulations providing for the payment by him to persons, other than local education authorities, of grants in respect of expenditure incurred or to be incurred for the purpose of educational services provided by them or on their behalf or under their management or for the purpose of educational research.



**Special Services.** The duty to provide medical inspection and treatment applies to all children and young persons attending maintained schools and colleges. Treatment, other than domiciliary treatment, will be free of direct charges. The provision of meals and milk is made obligatory to such an extent and subject to such conditions as the Minister may order. Local education authorities in England and Wales are now empowered, as those in Scotland have been, to provide boots and clothing to pupils if considered necessary. Parents will be liable to contribute to the cost of providing boarding accommodation or clothing if able to do so without financial hardship, except in the case of board and lodging provided on the ground that suitable education could not be provided otherwise.

**Development Plans.** Within the twelve months from the 1st April, 1945, local authorities were required to estimate their immediate and prospective requirements in the light of the new developments and to prepare development plans therefor and submit them to the Minister for his approval. These plans will cover the whole field of their activities and specify the alterations necessary to existing buildings, the additional county and voluntary schools required and the arrangements proposed to be made in respect of nursery schools and special educational treatment.

**Nursery Schools.** The power of a local education authority includes power to supply or aid the supply of nursery schools for children over 2 and under 5 years of age, and to attend to the health, nourishment, and the physical welfare of the children attending such schools.

The power to establish or aid nursery schools was first given to local education authorities by the Education Act, 1918. The object in view is a well-conducted nursery, and medical inspection and treatment are matters which receive particular attention. Grants are provided by the Ministry of Education. In the case of voluntary bodies, provided the schools are open to inspection by the local education authority, and at least one of the managers is appointed by them, they will qualify for grants. Some local authorities prefer to place these schools under the control of the Maternity and Child Welfare Committee.

**Vacation Schools, Vacation Classes, and Play Centres.** The powers of a local education authority include power to provide vacation schools, vacation classes and play centres or other means of recreation for scholars during their holidays or at such other times as the local education authority may prescribe. Play centres are institutions which provide for the recreation and physical welfare, under adequate supervision, of school-children. For this purpose the local education authority may



encourage and assist the establishment or continuance of voluntary agencies and associate with themselves representatives of voluntary associations for the purpose.

**Other Provisions.** The local education authority may make arrangements, of either a permanent or a temporary character, including the provision of board and lodging, for children otherwise unable to receive the full benefit of education, by means of the ordinary provision made for the purpose by the authority.

The powers of a local education authority include the power to aid scholars by scholarships or bursaries. The local authority may provide allowances for maintenance in connection with any scholarships awarded, and pay the cost of conveyance.

The local education authority may maintain any marine school, or any school which is part of, or is held in, the premises of any institution in which children are boarded.

**Application to Children in Canal Boats.** A child in a registered canal boat and his parents are deemed to be resident in the place in which the boat is registered as belonging thereto. If the parent satisfies the local education authority that the child is actually receiving efficient instruction in the area of another authority, the first-named authority shall grant a certificate to that effect. Such certificate may be rescinded or varied. The Ministry of Education have power to make regulations with respect to the form of certificates or pass-books as to attendance at school, to be used by children in canal boats.

#### **PUPILS REQUIRING SPECIAL EDUCATIONAL TREATMENT. BLIND, DEAF, DEFECTIVE, EPILEPTIC, AND OTHER CHILDREN**

**Education of Blind and Deaf Children.** Children too blind to be able to read the ordinary school books, or too deaf to be taught in a class of normal children, must be sent to schools certified to be suitable for them, and due provision of these have to be made by the local education authority. Blindness and deafness are no longer an excuse for absence from school.

It is the duty of a parent of a blind or deaf child to cause the child to receive instruction suitable to such child.

It is the duty of the local education authority to enable blind and deaf children resident in their area to obtain efficient and suitable education in some school certified by the Minister of Education. The local education authority, therefore, must provide or procure facilities for the education of blind and deaf children, either within or without their administrative area. If there is no special school within accessible distance of the child's home, the local authority must make arrangements for

the boarding of the child in or conveniently near to the school where the child is receiving education.

**Education of Defective and Epileptic Children.** A Committee of the Education Department reported in January, 1898, in favour of a similar measure to that relating to blind and deaf children, on behalf of defective and epileptic children. Accordingly, the Elementary Education (Defective and Epileptic Children) Act, 1899, was passed. Power is given to ascertain the numbers of children for whom provision is required. Where necessary, a local education authority may provide guides or conveyances for the children.

It is the duty of the local education authority to make suitable provision, either alone or in conjunction with another local education authority, for the education of children belonging to their area who are ascertained to be physically or mentally defective within the meaning of the Act of 1899.

The Mental Deficiency Act, 1913, provides that the duties of the local education authority shall include a duty to make arrangements, subject to the approval of the Minister of Education, for ascertaining which children are mentally defective. The Act also requires the authority to ascertain which of such children are incapable, by reason of mental defect, of receiving benefit or further benefit from instruction in special schools or classes.

The Mental Deficiency Act, 1913, also provides for notifying to the local authority under the Act the names and addresses of defective children, who, on or before attaining the age of 16, are about to be withdrawn from a special school or class, and concerning whom the local education authority is of opinion that it would be to their benefit that they should be sent to an institution or placed under guardianship.

For the purpose of the administration of the Act the local education authority must consult parents of children, and co-operate as far as possible with other authorities. The local education authority may obtain an Order from a Court of Summary Jurisdiction, requiring a child to be sent to a special school. On a child's discharge as no longer defective, a certificate of defect originally made out must be returned endorsed to the effect that the child is now normal.

**General Provisions as to Education of Blind, Deaf, Defective, and Epileptic Children.** The period of compulsory education for these children is extended to the age of 16 years. Where the local education authority incur any expense in respect of such a child the parent is liable to contribute such weekly sum as may be agreed on, or, failing agreement, as may be settled by a Court of Summary Jurisdiction. These contributions are usually with

respect to the maintenance of the child when arrangements for boarding have been entered into.

## FURTHER EDUCATION

**HISTORICAL.** The movement for the development in its modern form of technical education arose through the starting, by Dr. George Birkbeck, of classes for working men at Glasgow University in 1800. On his removal to London the classes were continued by his successor. Birkbeck continued the idea in London, with the result that Mechanics Institutes were founded in most industrial centres. The Adult School movement was a further expression of the Sunday Schools before referred to.

In 1841 Government grants in aid of Schools of Design were made, and in 1845 the Working Men's College was founded by Frederick Denison Maurice and that brilliant band of Christian Socialists who did so much to link up the learning of Oxford and Cambridge with the working classes. This was, in fact, a movement similar to the more recent one which has found expression in the Workers' Educational Association.

The result of the first International Exhibition in 1851 was the recognition of the inadequacy of our existing system to meet the advancing tide of foreign competition which was growing in all forms.

In the same year the Government School of Mines was established at Wigan, Owens College was founded at Manchester, and the Whitworth Scholarships were endowed.

In 1853 the Department of Practical Art was founded and the Department of Science added. These were handed over to the Education Department, which in 1856 obtained a Minister responsible to Parliament.

The second International Exhibition in 1862 resulted in a further development of voluntary effort in the interest of technical education. Included in this may be mentioned the Y.M.C.A. under Sir George Williams, and the London Polytechnic under the inspiration of Quintin Hogg.

In 1880 the City and Guilds of London Institute was incorporated, and the City of London Parochial Charities Act was passed in 1883, which enabled the London Livery Companies to contribute funds for aiding technical education.

Meanwhile a Royal Commission, which had been appointed in 1881, had been sitting, and it issued its report in 1884. The result was the passing of the Technical Education Act, 1889, which enabled certain local authorities to aid or supply higher education at a cost limited to a rate of 1d. in the £, later increased to 1½d. The provisions of the Local Taxation (Customs and

Excise) Act, 1890, which relate to the assignment of a portion of the Excise Duty, popularly termed "whisky money," as a grant in aid of technical education, was repealed by the Local Government Act, 1929, the effect being that the grants discontinued are incorporated in the service grant for higher education.

**Power to Aid Research.** A local education authority may aid teachers and students to carry on an investigation for the advancement of learning or research in, or in connection with, an educational institution, and with that object may aid educational institutions.

### UNEMPLOYMENT ACT, 1934

The effect of this Act is considered in Chapter XXV: Unemployment.

### PROVISIONS FOR HEALTH AND WELL-BEING OF SCHOLARS

These functions may be classified as follows—

#### *Obligatory*

Medical Inspection and Treatment  
Care of Defectives and Epileptics  
Provision of Meals and Milk  
Physical Training  
Provision of board and lodgings

#### *Optional*

Provision of Clothing  
Cleansing of Verminous Children  
Cruelty By-laws  
Employment By-laws  
Street Trading By-laws  
Entertainment Licences

**Medical Inspection and Treatment.** The foundation on which the School Medical Service is based was the Education (Administrative Provisions) Act, 1907.

By this Act the local education authority for elementary education had power to provide for attendance to the health and physical condition of scholars in public elementary schools, vacation schools, vacation classes, and play centres, or for other means of recreation for scholars.

It is now the duty of the local education authority to make such arrangements as may be sanctioned by the Minister of Health for attendance to the health and physical condition of scholars in public elementary schools, and to provide for the medical inspection of children. According to present arrangements inspection must take place during the first year, before the child leaves, and at some intermediate period. This is the minimum.

A local education authority must provide medical inspection and treatment in schools provided by them, schools under the Welsh Intermediate Education Act, 1899, continuation schools under their direction and control, and such other educational

institutions and schools provided by them as the Minister of Health may direct.

The local education authority may extend such provisions to any other school or educational institution, whether aided by them or not, if so requested by the management.

Local education authorities are to avail themselves of the services of private medical practitioners for the medical treatment of children and young persons, but shall not establish a general domiciliary service of treatment.

The Minister of Education, a local education authority or officer thereof may require a parent of a pupil to submit him for examination by a duly qualified medical practitioner under liability of a fine not exceeding £10. Free medical treatment may be provided, but a parent may give notice of objection to his child availing himself of such treatment and he must not then be encouraged or assisted to do so.

**Provision of Meals.** The provision of meals for children in elementary schools was introduced by the Education (Provision of Meals) Act, 1906, as the result of the Report of the Departmental Committee on Physical Deterioration. One of the immediate consequences of the outbreak of war was the passing of the Education (Provision of Meals) Act, 1914, which removed the limitation on rates for the provision of food.

The local education authority must take steps for the provision of milk and meals for children attending their schools.

The local education authority may themselves or through their Committee provide, without limit as to expenditure, land, buildings, furniture, apparatus, and such officers and servants as may be necessary for organization, preparation, and service of such meals.

The powers of the local education authority are exercisable both on days when the school meets and on other days.

No teacher is to be required as part of his duties to assist in any way in the handling or supervising the handling of food, apart from the supervision of pupils.

**Miscellaneous Powers.** Power to promote social and physical training is given to a local education authority. Such authority may make arrangements to supply or maintain or aid the supply or maintenance of—

(a) Holiday or school camps especially for young persons attending continuation schools.

(b) Centres and equipment for physical training, playing fields, school baths, and school swimming baths.

(c) Other facilities for social and physical training in the day or evening for children and young persons, and persons over the

age of 18 attending education institutions in the day or evening. See the Physical Training and Recreation Act, 1937, below.

A local education authority may direct their medical officer or other person to examine any child attending school, and if such medical officer or person is of opinion that such child is in a verminous condition, the local authority may give notice to the parent of the child requiring him to cleanse the child.

Provision of conveyances and guides may be made by a council, where necessary, for teaching children or other scholars, and travelling expenses may be paid.

The powers of a local education authority include a power to prosecute any person under the Children and Young Persons Act, 1933 (relating to cruelty), where the person against whom the offence was committed was a child, and to pay any expenses incidental to the prosecution.

**Physical Training and Recreation Act, 1937.** The Act does not set up a completely new compulsory system, but makes full use, through the agency of the local authorities and the voluntary organizations, of the machinery which already exists.

Capital grants will be paid to aid in providing facilities for exercise and recreation. Projects put forward by local voluntary bodies will be eligible for grant.

It is recognized that national organizations can do much to encourage local effort, and grants may be made to selected organizations for this purpose and to enable them to supervise facilities provided by grant-aided local voluntary bodies.

The Central Council of Recreative Physical Training, comprising more than 100 organizations concerned with physical recreation and national club movements, may receive grants to assist them in their work.

Financial assistance may also be given to the National Playing Fields Association. Care will be taken to prevent overlapping or interference with the King George V Memorial Fund. Similar assistance will be provided to enable swimming baths, camping sites, and other recreational facilities to be extended.

The Government propose to provide and maintain a National College of Physical Training, administered by a suitably constituted governing body subject to the control of the Minister of Education.

## **EMPLOYMENT OF CHILDREN AND YOUNG PERSONS**

Until 1933 the principal enactment relating to the employment of children outside school hours was the Employment of Children Act, 1903. This Act was materially amended by the Education Act, 1918.

The provisions were further amended by Part IV of the Children and Young Persons Act, 1932, and are now contained in Part II of the Children and Young Persons Act, 1933, as described in the following chapter. See particularly the paragraphs in that chapter headed—

- (a) Restrictions on employment of children.
- (b) Power of local authority to make by-laws with respect to employment of persons under 18 other than children.
- (c) Street trading.
- (d) Entertainments.

THE EDUCATION ACT, 1944, empowers local education authorities to prohibit or restrict employment of pupils attending their schools if they consider such employment to be prejudicial to health or otherwise render the pupil unfit to obtain the full benefit of the education provided. (Sect. 54.)

THE UNEMPLOYMENT INSURANCE ACT, 1938, extends the powers of instruction provided under the Unemployment Insurance Act, 1935, so as to enable meals and milk and biscuits to be provided for persons attending for instruction.

## CHOICE OF EMPLOYMENT

This subject first received statutory force by the Education (Choice of Employment) Act, 1910. The powers of a local education authority include power to make arrangements, subject to the approval of the Minister of Education, to give boys and girls under 18 years of age assistance with respect to the choice of suitable employment by means of collecting and communication of information, and the furnishing of advice.

This subject had also received the attention of the Employment Committees established under the Labour Exchange Act, 1909. In many centres Juvenile Employment Committees had been set up which, with the After Care Committees, were undertaking similar functions to those of the Education Committees. In October, 1921, Lord Chelmsford was asked by the Government to inquire into the position. He reported in favour of the Education Authorities exercising their powers under the Choice of Employment Act, and to take over the general administration of the Unemployment Insurance Acts as they affect boys and girls under 18 years of age. An Order was issued in 1927 providing that the local education authorities were to administer unemployment insurance or relinquish choice of employment to the Ministry of Labour in accordance with the Unemployment Insurance Act, 1923, now the 1935 Act. The Minister of



Labour refunds 75 per cent of the approved expenditure of the local education authority on this service.

## GENERAL

### Acquisition, Appropriation, and Alienation of Land

This is now governed largely by Part VII of the Local Government Act, 1933.

1. **Acquisition of Land.** A local education authority may, for the purposes of carrying out its powers and duties, purchase land by agreement by incorporation of the Lands Clauses Acts. The authority may purchase land compulsorily by means of an order confirmed by the Minister of Education, incorporating with the necessary adaptations the Lands Clauses Acts as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919, and the Railway Clauses Consolidation Act, 1845.

The procedure is now governed by the Acquisition of Land (Authorization Procedure) Act, 1946.

2. **Appropriation of Land.** Land acquired for specific purposes may be otherwise appropriated by a local education authority in the following manner, viz.—

(i) With the consent of the Minister of Education, land, if acquired for primary education, may be appropriated for the purpose of secondary and further education, and *vice versa*.

(ii) With the consent of, and after inquiry by, the Minister of Health, land, if acquired otherwise than for education, may be appropriated for education.

(iii) With the consent of the Minister of Education, land acquired for educational purposes may be appropriated to other purposes approved by the Minister of Health.

3. **Alienation of Land.** The provisions of the Local Government Act, 1933, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall apply to a local education authority. For this purpose the Minister of Education shall be deemed to be substituted for the Minister of Health. (Sects. 164 and 165.)

## FINANCE

The income of a local education authority is derived from gifts, fees, interest on endowments, sales, Government Grants, rates, etc.

1. **Education Grants.** These are explained in Chapter XXVI.

2. **Expenses of Local Education Authorities**

**Rates.** The deficiency resulting after all the other sources of income have been used up is provided by the rates. There is no statutory limit.

Public Assistance Authorities may contribute towards the



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Public Assistance Authorities may contribute towards the

expenditure in respect of defective or epileptic children sent by them to special schools.

**Accounts.** Accounts must be kept in accordance with the requirements of the Ministry of Health. The accounts of a County Borough Education Committee must be kept apart from the other accounts of the borough. The local education authority must submit Financial Statements giving particulars of all income and expenditure arising under various headings. This statement is the basis on which the chief grants of the Minister of Education are made. The Education Accounts (Annual Statements) Regulations, 1945, prescribe a new Form of Accounts necessary owing to the 1944 Act changes. An Income and Expenditure basis is prescribed.

**Audit.** The accounts are made up yearly to the 31st March, and are audited by the District Auditor of the Ministry of Health. Public notice of the date of audit must be given, and any elector may lodge an objection. The auditor may disallow any illegal payments or strike out payments which he considers excessive for the value received, and surcharge the person or persons responsible for such payments. Appeal or application for relief lies to the King's Bench Division of the High Court of Justice or if the amount involved does not exceed £500 to the Ministry of Health. (See *Rex v. Monmouthshire County Council, ex parte Smith*, 1935, 51 T.L.R. 435; 33 L.G.R. 279; 153 L.T. 338.)

**Loans.** Money for capital expenditure may be borrowed by the local education authority, with the approval of the Ministry of Health. It is repayable within 60 years.

**Inspection of any School.** The Minister of Education may, free of cost, inspect and report upon any school or educational institution if requested by the governing body or head master.

**Provisions as to Proof of Age.** Certificates of Birth for any purposes of elementary education or employment may be obtained on payment of sixpence.

Every Registrar of Births and Deaths is required to transmit a return of children as may be specified by the local education authorities. The authority may pay an agreed fee.

**Officers.** A local education authority may appoint necessary officers, to hold office during the pleasure of the authority, and may assign to them such salaries as they think fit, and may remove any such officers. Teachers are dealt with later.

**Enforcement of Duties.** If the local education authority fail to fulfil any of their duties, the Minister of Education may hold a public inquiry and make such Order as he thinks necessary, which may be enforced by writ of mandamus issuing out of the King's Bench Division of the High Court of Justice.

**Returns, Inquiries, Reports, and Notices.** Returns must be made by the local education authority and managers of schools.

For this purpose a system of registration of school attendance is established. The usual procedure is for particulars of the child to be entered into the Admission Register on admission into the school. Each class in the school has an attendance register in which the names of all the children are entered. The attendances are marked with the utmost care in accordance with the rules contained in the Ministry of Education's Code of Regulations. In order to constitute an attendance, a child must receive at least two hours' secular instruction inclusive of authorized period for recreation. The registers must be verified by the managers at least once a quarter, and they are always inspected very carefully by H.M. Inspector. These registers constitute the basis for the payment of the Substantive Grant by the Minister of Education.

**Public Inquiries** may be held by the Minister of Education for the purpose of any of his powers and duties. The Minister of Education must lay before both Houses of Parliament annually a report of the proceedings during the preceding year.

Any notices may be served on and authenticated by the clerk to the local education authority.

**Miscellaneous.** Gifts may be accepted by a local education authority. Such authority shall have power to accept any real or personal property given to them as an educational endowment or on trust for any purposes connected with education.

Exemption of school buildings from building by-laws made by any local public health authority is provided where plans are approved by the Minister of Education.

Exemption from rates is granted for voluntary schools, except to the extent of any profit derived by the managers of the school from the letting thereof.

Validity of undertakings made by any person intending to become a teacher is provided for, notwithstanding that he is legally an infant at the time the undertaking is given.

**Registration of Teachers.** The Education (Administrative Provisions) Act, 1907, provided for the establishment of a Registration Council constituted under an Order of the Privy Council. There is assigned to the council the duty of forming and keeping a register of such teachers as apply to be registered and satisfy the conditions of registration established by the council.

## SCHOOLMASTERS AND TEACHERS

**Appointment and Dismissal of Teachers.** (i) In *county schools* and, subject to provisions as to religious education outlined

below, in every *controlled* school and *special agreement* school, the appointment of teachers, save as otherwise provided by the rules of management or articles of government for the school, is under the control of the local education authority, and no teacher may be dismissed except by that authority.

(ii) In *aided schools* the respective functions of the local education authority and the managers or governors of the school with regard to the appointment of teachers, and, subject to provisions as to religious education, with respect to the dismissal of teachers, are regulated by the rules of management or articles of government of the school; but the local education authority determines the number of teachers and may prohibit the dismissal of teachers or require the dismissal of a teacher, except for reasons provided in the Act expressly empowering the governors or managers so to act. Agreements may be made between the local education authority and the managers or governors, or a determination may be made by the Minister to enable the authority to prohibit the appointment, without the consent of the authority, of teachers to be employed for secular instruction, and for enabling the authority to give directions as to the educational qualifications of such teachers.

(iii) With regard to *religious* instruction, special provisions apply. Where the teachers in a *controlled* school exceeds two, "reserved teachers" selected for their fitness and competence to give religious instruction must be appointed therefor. The total number of reserved teachers must not exceed one-fifth of the total staff of the school. The head teacher must not be a reserved teacher, but the local education authority must consider any representations made by the managers or governors before appointing a head teacher. The authority must obtain the agreement of the foundation managers or governors of a controlled school to the appointment of reserved teachers, and the managers or governors may require a reserved teacher's dismissal on the ground that such teacher has failed to give religious instruction efficiently and suitably.

(iv) In *aided and special agreement* schools the religious instruction is under the control of the managers or governors, and in accordance with the trust deed relating to the school. A teacher appointed to give religious instruction in an aided school, other than in accordance with an agreed syllabus, who fails to do so efficiently and suitably, may be dismissed by the managers or governors without the consent of the authority.

Where the agreement made with a special agreement school provides for the appointment of reserved teachers, the authority, when appointing such teachers, must consult the foundation

managers or governors, who may prevent the appointment on the ground of the person's unfitness or incompetence to give such instruction. They may also dismiss a reserved teacher on the same ground.

Apart from the above, no person can be disqualified by reason of his religious opinions from employment in a school.

Women must not be disqualified or dismissed solely by reason of marriage.

Out of the rates the local education authority may pay for the provision of vehicles or grant reasonable travelling expenses for teachers or children attending school or college.

**Candidates for the Teaching Profession.** The Minister of Education recognizes the following grades of teachers.

(a) **TEACHERS IN PRIMARY SCHOOLS, viz.—**

(i) *Pupil Teachers*, who must be over 16 and not over 18 previous to recognition. They spend part of their time in receiving instruction and part in teaching or receiving training under supervision in a primary school.

(ii) *Bursars*, who are boys and girls (16–17) recommended by the local education authority, who intend to become primary school teachers and who are attending full time at a recognized secondary school and require financial assistance in order to continue their education.

(iii) *Student Teachers* (17–18), who are young persons who either have been bursars or have regularly attended a recognized secondary school for three years, and are recommended by a local education authority for approval.

(iv) *Uncertificated Teachers*, who are persons 18 years of age who have passed the preliminary examination for the school teachers' certificate or an alternative qualifying examination, and find it impossible, for personal or other reasons, to secure the advantages of a course of training in a training college.

(v) *Trained Certificated Teachers*, who are persons who have passed the final examination approved by the Minister for students in training colleges or other recognized qualification. A four years' course is allowed by the Minister of Education at certain universities and university colleges to which are attached Teachers' Training Departments. During the first three years candidates work for a degree, and in the fourth year school practice is carried out in the district, and professional subjects studied. If certified as efficient by the university authorities and H.M. Inspector, they automatically receive their certificate.

(vi) *Supplementary Teachers*, who are women over 18 years of age, and who, not having passed any examination qualifying as uncertificated teachers, are specially approved by H.M.

Inspector for their capacity to teach in Infants' Departments, or lowest classes in small rural schools.

(vii) *Teachers of Domestic Subjects*, who are women over 18 years of age who enter training colleges with a view to obtaining a diploma or diplomas for cookery, laundry work, or housewifery, or a combined diploma in these subjects.

(viii) *Teachers in Special Schools* who are required to have passed an approved examination in the methods of teaching such children. Certificated teachers are eligible for recognition either as head teachers or as assistant teachers in special schools for blind, deaf, defective, or epileptic children.

(ix) *Teachers of Special Subjects*, e.g. Handicrafts, who pass an examination by a recognized examining body

(b) **TEACHERS IN SECONDARY SCHOOLS.** There is no rigid standard for eligibility to teach in a secondary school. The Ministry of Education generally require new appointments to be made from persons possessing an honours degree and a diploma in education from some university or university college having a Teachers' Training Department.

(c) **TEACHERS IN TECHNICAL SCHOOLS** are usually drawn from persons who, in addition to academic qualifications, have specialized in their particular subject and have had industrial or commercial experience. Such persons usually possess a university degree, or its equivalent, e.g. Associate Membership of the Institutes of Mechanical, Electrical, or Civil Engineers.

## PENSION SCHEME FOR CERTIFIED TEACHERS

The School Teachers (Superannuation) Act, 1918, was passed to make provisions with respect to the grant of superannuation allowances to teachers and of gratuities to their legal personal representatives, and to amend the Elementary School Teachers (Superannuation) Acts, 1898 to 1912. The Ministry of Education may grant superannuation allowances—

(I) To any teacher who has attained the age of 60; and—

(1) has been employed in recognized or qualifying service at the commencement of the Act for not less than the prescribed number of years; and

(2) has been employed in recognized or qualifying service for not less than the prescribed period after the commencement of the Act; or

(II) To any teacher to whom the Act of 1898 applied at the commencement of the 1918 Act, who has been employed in recognized service for a period equal in the aggregate to not less than half the number of years between the date of certification

as a teacher and the date of the 65th year of his age; or

(III) To any teacher who—

- (1) has completed ten years of recognized service; and
- (2) has been employed in recognized service within the prescribed period before the date on which he applies for a superannuation allowance under this section; and
- (3) satisfies the Ministry that he has become permanently incapable, through infirmity of mind or body, of serving efficiently as a teacher in recognized service.

**The Superannuation Allowances** which may be granted are—

- (a) an annual superannuation allowance of an amount not exceeding one-eightieth of the average salary of the teacher in respect of the last five years of recognized service for each year of recognized service; or one-half of the average salary, whichever is the less; and
- (b) by way of additional allowance, a lump sum not exceeding one-thirtieth of the average salary of the teacher in respect of each completed year of recognized service, or one and a half times the average salary, whichever is the less.

In the case of a woman teacher, who, after ceasing in consequence of marriage to be employed in recognized service, has subsequently returned to recognized service and satisfies the prescribed conditions, such number of years as may be prescribed, not being less than twenty, shall be substituted for thirty years as the qualifying period of service.

**Gratuities** may be granted to a teacher who is not qualified for the grant of an annual superannuation allowance, to an amount not exceeding one-twelfth of his average salary in respect of each completed year of recognized service.

**Death Gratuities** may be granted to the legal personal representatives of any teacher who has been employed in recognized service for a period amounting in the aggregate to five years, and who dies while in recognized service. The gratuity may be of an amount not exceeding the average salary of the teacher, or the amount of the additional allowance which the Minister might have granted to him if, at the date of his death, he had become permanently incapable of serving efficiently as a teacher in recognized service, whichever is the greater.

Where a teacher dies after having become qualified for the grant of an annual superannuation allowance, and the aggregate amount of the sums received or receivable by him up to the time of his death on account of annual superannuation allowance and additional allowance is less than the amount of his salary, the Ministry may grant to his legal personal representatives a supplementary death gratuity not exceeding the difference between



the amount of the average salary and the said aggregate amount.

The expression "qualifying service" means any employment, whether in the capacity of a teacher or otherwise, which the Treasury, on the recommendation of the Ministry, may declare to be qualifying service for the purpose of calculating the period qualifying for a superannuation allowance. The expressions "certificated teacher" and "uncertificated teacher" mean respectively a teacher who is recognized under the regulations of the Ministry for the time being in force as a certificated teacher in county or voluntary schools, and a teacher who is so recognized as an uncertificated teacher for such schools.

The expenses incurred by the Ministry in carrying this Act into effect shall be defrayed out of moneys provided by Parliament.

School Teachers (Superannuation) Acts, 1922 to 1935. Under the Act of 1922, all teachers in recognized service on 1st June, 1922, or thereafter (not being disqualified for benefit under Sect. 1 of the 1918 Act) pay 5 per cent of their salaries as contribution. Where a teacher through sickness receives less than his full salary his actual receipts for the time being are taken into consideration, but so as to secure that the contribution will not exceed the amount, if any, by which the salary exceeds four-fifths of the full salary which the Ministry of Education would recognize for the purposes of grant. There are exemptions from liability to contribute when a teacher proves that it is impossible for him by reason of age to complete, before reaching 65, such a number of years of recognized or qualifying service as are requisite to qualify at that age for an annual superannuation allowance. Exemption is possible when a teacher is not a British subject. This entails disqualification for benefit, but a claim can be made for the repayment of the aggregate of contributions paid after deducting sums previously received by way of benefit under the Act of 1918. Sections also deal with exemptions in the case of women teachers who cease employment within one year of marriage, and immediately satisfy the Ministry that they do not again seek employment as teachers. Where a teacher dies without having received benefit or repayment of contributions, his legal personal representatives are entitled to the payment of all contributions paid by him if a death gratuity is not payable. The section setting out the means of calculating salary is so worded that a salary does not include fees and other emoluments.

The School Teachers (Superannuation) Act, 1924, prolonged the period during which contributions were payable to the 1st April, 1926. The Act of 1925 made these contributions permanent.

The Teachers (Superannuation) Amendment Act, 1928, amends the Teachers (Superannuation) Act, 1925, and the corresponding

Act relating to Scotland, so as to extend from one year to four years the period in which a teacher may serve in a school abroad maintained primarily for children of British subjects, without being deprived of the advantages of the superannuation scheme.

The Teachers (Superannuation) Act, 1933, makes the maximum period for payment of contributions during intervals of service four years, in the case of a teacher serving in a foreign country, instead of one year.

The Teachers (Superannuation) Act, 1935, was passed following the issue in April, 1935, of the Government Actuary's report on the deficiency of nearly ten million pounds under the Teachers' Superannuation Acts. He recommended that contributions should be increased by 2 per cent to 12 per cent, to be equally divided between employer and employed.

The Act provided that an allowance granted between October, 1931, and June, 1935, must be at least 98 per cent what it would have been if no economy deduction had been in operation.

The Teachers (Superannuation) Act, 1937, permits the allocation of part of a pension to a spouse or dependant. Teachers discontinuing service temporarily, for a period not exceeding five years, or such longer period as the Ministry may allow, for service outside the United Kingdom, or in any other case for not exceeding one year, may pay their contributions at a rate of 10 per cent in order to preserve their pension rights. Educational organizers are now within the scope of this provision.

The Teachers (Superannuation) Act, 1945, enlarges the scope of the qualifications for allowances by including certain members of the staffs of local education authorities together with supplementary teachers and youth leaders. Provision is made for reckoning basic services and repayment of contributions to those previously within schemes under the Local Government Superannuation Act, 1937.

## THE REPORT ON AGRICULTURAL EDUCATION

A Committee set up in 1941 under the chairmanship of the Rt. Hon. Sir Arthur Luxmoore, Lord Justice of Appeal, issued its report in April, 1943. The Committee recommended the setting up of a National Council for Agricultural Education, to be charged with the duty of providing agricultural education, and composed of representatives of the farming industry, the Ministry of Agriculture, the Board (now Ministry) of Education, the Agricultural Research Council, and the Universities. Instruction in agriculture should not be restricted to rural schools, but provided equally in urban schools.

The Committee also recommended that the provincial and

county advisory services which have for their object the improvement of the efficiency of those engaged in the agricultural industry should be formed into a unified national service.

These services should be financed wholly by the Exchequer.

On the 20th January, 1944, the Minister of Agriculture and Fisheries made a statement in the House of Commons, in which he said that the Government had decided to accept the Luxmoore Committee's recommendation with regard to the unification of the advisory services, but, having regard to the provisions of the Education Bill, then before Parliament, the provision of agricultural education would remain a function of the local authority, but in their capacity as a local education authority and on a mandatory basis instead of permissive as at present. The service will continue to be grant-aided through the Ministry of Agriculture. A joint advisory committee would be set up as permanent machinery by the Ministry of Agriculture and the Board (now Ministry) of Education to advise on general educational policy and methods of training at farm institutes.

#### **FLEMING COMMITTEE ON PUBLIC SCHOOLS**

At the request of the Headmasters' Conference and the Governing Bodies' Association of the Public Schools, a Committee was set up on the 2nd July, 1942, under the chairmanship of Lord Fleming, to inquire into the possibility of extending facilities for boarding school education to those desiring to profit thereby irrespective of their means, and the initiation of representative meetings to review industrial and commercial training, including the apprenticeship system. The Committee reported in favour of the abolition of fees, including fees in Direct-aided Schools. They recommended that the loss of income should be made up to the direct-grant schools in order to enable them to maintain their educational standard. Seven members of the Committee, including the Chairman, were unable to agree with the majority, chiefly on account of the possibility of undermining the independence of these secondary schools.

#### **McNAIR COMMITTEE ON RECRUITMENT AND TRAINING OF TEACHERS**

In 1942 a Committee, under the chairmanship of Dr. (now Sir Arthur) McNair, then Vice-Chancellor of the University of Liverpool, was appointed to investigate the question of the recruitment of teachers and the appropriate methods of training them, including the supply and training of youth leaders.

#### **NORWOOD REPORT ON SECONDARY EDUCATION**

The President of the Board of Education (the Rt. Hon. R. A.

Butler) requested the Committee of the Secondary Schools Examination Council in October, 1941, "to consider suggested changes in the secondary school curriculum and the question of school examinations in relation thereto." The Chairman of the Committee was Sir Cyril Norwood, President of St. John's College, Oxon, and the Report was issued in July, 1943.

The Committee considered the purpose of secondary education to be to provide for the pupils' special interests and aptitudes by the kind of education most suited to them. It should contain both diagnosis and prognosis and special treatment adapted to the particular case.

The Committee considered that the curriculum should make provision "for satisfying the intellectual, aesthetic, spiritual and physical wants of the pupils and must look forward to their needs as citizens and as workers with hand and brain in a society of fellow citizens and fellow workers. But personality is of great variety, differing both in kind and degree, so that the curriculum must be varied and flexible if it is to offer the nurture of the most benefit to each individual." As a special curriculum cannot be provided for each pupil it must be assumed that they have enough in common to justify certain groupings. Three main types of curriculum have appeared suitable. First, one which treats the various fields of knowledge as suitable for study for their own sake without consideration of future vocation. Second, one bounded by a near horizon clearly envisaged therefor, closely related to industry, trade, and commerce. Third, one providing a balanced training of mind and body and a correlated approach to the humanities, natural science, and the arts, varied enough to prepare pupils for the work of life. Existing secondary education already provides this variety by means of the special courses offered to pupils. The curriculum of existing secondary schools has been closely linked with the School Certificate Examination. Evidence shows that the Examination requirements cast their shadow over all secondary education and this needs correcting. The curriculum has been expanded to meet such a variety of needs that the range of subjects is now too wide. Existing curricula, being based on the Grammar School tradition of a liberal education, has become outmoded by the great need for vocational studies. Although based on the assumption that the student will proceed to a university career, only a small percentage of pupils reach their objective and the others leave school ill-prepared.

The "Form Master" tradition should be revived and introduced into all secondary schools. Study of English, art and handicrafts should be prominent and foreign languages should not be excluded, particularly Spanish and Russian.

The selection of children at the age of 11 for the appropriate secondary school will be based on the parents' wishes and the pupils' school records supplemented, if necessary, by intelligence or other tests. The school certificate examination system should be altered. The higher certificate examination should be abolished and its place taken by an examination without a syllabus at the age of 18. State scholarships should meet the full cost of university education and life according to parents' resources.

The Committee consider that some work of national importance should be undertaken by pupils during the six months' interval between secondary school and university. Such work should have social and educational advantages and promote a sense of common purpose throughout the community.

The Committee recommended that greater encouragement should be given to research into educational matters.

## STATISTICS AND FINANCE

The publication of certain statistics having been suspended during the war, the latest available are those for the year ended 31st March, 1938.

ELEMENTARY SCHOOLS		<i>Average Attendance</i>
	<i>Schools</i>	
Provided schools . . . .	10,363	3,151,893
Non-provided schools—		
Anglican . . . . .	8,979	1,004,117
Methodist . . . . .	119	15,268
Roman Catholic . . . .	1,266	331,086
Jewish . . . . .	13	3,973
Others . . . . .	176	20,364
	<u>10,553</u>	<u>1,374,808</u>
	20,916	4,526,701
Certified special schools . . . .	611	44,553
Nursery schools . . . . .	103	5,666
Other schools . . . . .	48	5,087
Total . . . . .	<u>21,678</u>	<u>4,582,007</u>

SECONDARY SCHOOLS		<i>Average Attendance</i>
	<i>Schools</i>	
Council schools . . . . .	773	270,909
Foundation schools (chiefly Anglican) . . . . .	430	140,792
Roman Catholic schools . . . .	92	28,250
Welsh Intermediate schools . . .	103	30,052
On Grant List . . . . .	1,398	470,003
Not on Grant List . . . . .	758	99,086
Total . . . . .	<u>2,156</u>	<u>569,089</u>

**Public Expenditure on Education.** The following table is based upon the assumption that the new scheme operated from the 1st April, 1945—

<i>Year ending 31st March</i>	<i>Out of Taxes £000's</i>	<i>Out of Rates £000's</i>	<i>Total £000's</i>
1833	20	—	20
1914	14,369	14,070	28,439
1943	60,208	51,888	112,096
(Estimated) 1945	63,900	59,500	123,400
(Estimated) 1946	70,700	58,200	128,900
1952	97,200	73,500	170,700
Ultimately	115,100	88,100	203,200

The following table shows the causes of the increases—

	1946 £000's	1952 £000's	Ultimately £000's
Recasting full-time education . . .	2,500	24,500	48,500
Reform of the dual system . . .		1,900	4,600
Young people's colleges . . .	100	5,500	5,500
Technical and adult education . . .	2,300	7,300	8,700
Nursery schools . . .	500	5,000	6,000
Medical inspection and treatment . . .	100	3,100	6,500
<b>Total increase . . .</b>	<b><u>£5,500</u></b>	<b><u>£47,300</u></b>	<b><u>£79,800</u></b>

## EDUCATION ACT, 1946

This Act enables a local education authority, with the approval of the Minister, to pay the cost of enlarging a controlled voluntary school where such an enlargement is wholly or mainly due to providing accommodation for pupils from some other voluntary school, or a school which is unable, through closure or other reasons, to continue to accommodate such pupils.

They may, also, provide temporary accommodation at voluntary schools, although such provision may not become permanent in their Development Plan.

The collective act of worship required under the Education Act, 1944, must take place on the school premises, except on special occasions in connection with Aided and Special Agreement schools when it may take place elsewhere, e.g. in church.

The First Schedule sets out the respective responsibilities of the local education authority and the managers or governors of voluntary schools with regard to maintenance.

## CHAPTER XXII

### THE CHILDREN AND YOUNG PERSONS ACTS

IN order to appreciate the position which led to the passing of the Children and Young Persons Act, 1933, it is important to understand the earlier legislation which brought about that position.

#### THE CHILDREN ACT, 1908

The Children Act, 1908, consolidated thirty-eight previous Acts. The Factory and Workshops, the Coal Mines, and the Metalliferous Mines Acts, and other statutes all show in their earlier stages the utmost reluctance to grant even the most elementary justice, much less mercy, towards the child. Thus, it was not until 1842 that boys below ten years of age and women and children were prohibited to work below the ground in mines.

**Additional Legislation.** The following additional statutes have since been passed, viz.—

The Criminal Justice Administration Act, 1914.

The Criminal Justice Act, 1925.

The Children and Young Persons Act, 1933.

The Local Government Act, 1933.

The Public Health Act, 1936, Part VII. (See Chapter XII.)

The Children and Young Persons Act, 1938.

The Education Act, 1944.

#### THE CHILDREN AND YOUNG PERSONS ACT, 1932

The main object of this Act, as given in the Explanatory Memorandum, was "to amend the existing law contained in the Children Act, 1908, and other statutes relating to the care and protection of neglected children and young persons, and the treatment of young offenders."

The proposals in the Act were based, generally, on the recommendations made by the Committee on the Treatment of Young Offenders (Cmd. 2831, 1927), so far as they relate to persons under seventeen. The Act also made some changes in the law regarding infant life protection, the supervision of children and young persons in voluntary homes, and the employment of young persons in street trading. Opportunity was also taken of making other amendments of a minor character in the Children Act, 1908,

which experience of administration had shown to be desirable; and of re-enacting, with minor changes, the provisions as to the employment of children and young persons contained in Part VIII of the Education Act, 1921, with a view to their consolidation in the Children Acts.

With the exception of the provisions relating to the Guardianship of Infants, the Act has been repealed and its provisions incorporated in the Children and Young Persons Act, 1933.

### THE CHILDREN AND YOUNG PERSONS ACT, 1933

It was considered undesirable from an administrative point of view to bring the Act of 1932 into force until the law had been consolidated, and the Children and Young Persons Act, 1933, was passed to consolidate the Act of 1908 in the Act of 1932. It makes no fundamental change in principles but embodies the results of the experience of the operation of previous legislation.

This is an Act to consolidate certain enactments relating to persons under the age of eighteen years, and it came into operation on 1st November, 1933. (Sect. 109 (2).)

Although this is said to be a Consolidating Act, nevertheless certain sections of the previous Acts before enumerated have not been repealed. It is, therefore, necessary to consider the provisions of the previous Acts so far as they remain unrepealed, as well as the provisions of the present Act.

**Parts and Schedules of the Act.** The Act is divided into six Parts consisting of 109 sections. The Parts are as follows—

**Part I.** Prevention of Cruelty and Exposure to Moral and Physical Danger.

(This is almost entirely consolidation of existing law.)

**Part II.** Employment.

**Part III.** Protection of Children and Young Persons in Relation to Criminal and Summary Proceedings.

**Part IV.** Remand Homes, Approved Schools, and Persons to whose care Children and Young Persons may be committed.

**Part V.** Homes supported by Voluntary Contributions.

**Part VI.** Supplementary.

There are six Schedules, viz.—

First Schedule. Offences against children and young persons, with respect to which Special Provisions of this Act apply.

Second Schedule. Constitution of Juvenile Courts.



Third Schedule. Amendments of certain enactments relating to criminal proceedings and Courts of Summary Jurisdiction.

Fourth Schedule. Provisions as to administration of approved schools and treatment of persons sent thereto.

Fifth Schedule. Transitory provisions.

Sixth Schedule. Enactments repealed.

For purposes of brevity the Children and Young Persons Act, 1932, will hereafter be referred to as the Act of 1932; and the Children and Young Persons Act, 1933, as the Act of 1933.

### CENTRAL AUTHORITY

A Division of the Home Office has been constituted to deal with questions relating to children, particularly approved (formerly reformatory and industrial) schools, children's courts, probation officers, cruelty to children, and street trading.

The Ministry of Health is the central authority for Part I of the Children Act, 1908, Infant Life Protection, the administration of which was transferred to the Ministry by Order in Council as from 1st July, 1919.

The Ministry of Education is responsible for Part II of the Act of 1933, viz. Employment.

### LOCAL AUTHORITIES UNDER THE ACT

Sect. 96 of the Act of 1933 as amended is as follows—

(1) Subject to the modifications hereinafter contained as to the City of London, where any powers or duties are by this Act conferred or imposed on local authorities (by that description), those powers and duties shall be powers and duties of local education authorities.

### COMMITTEES OF LOCAL AUTHORITIES

Sect. 96 of the Act of 1933 provides—

(7) A local authority may refer to a committee appointed for the purposes of this Act, or to any committee appointed for the purposes of any other Act, any matter relating to the exercise by the authority of any of their powers under this Act and may delegate any of the said powers (other than any power to borrow money) to any such committee.

### CHILD LIFE PROTECTION

Part V of the 1932 Act, Infant Life Protection, was framed to give substance to the recommendations made in the third Report of the Child Adoption Committee for the amendment of Part I of the Children Act, 1908, dealing with Infant Life Protection.

It was left outstanding by the Act of 1932, but repealed by the Public Health Act, 1936.

Sects. 65 to 69 of the Act of 1932 amended Sect. 1 of the Children Act, 1908, providing for notice of maintenance agreements being given to local authorities. They amended Sect. 4 of the same Act, giving powers to local authorities to prevent overcrowding; they enabled local authorities to obtain orders of removal from unsuitable premises or unsuitable persons; and they exempted institutions maintained by a Government Department or any local authority from Part I of the Act of 1908.

These provisions have been repealed by Part V of the Third Schedule to the Public Health Act, 1936, and are now contained in the Public Health Act, 1936, Part VII. (See Chapter XII.)

The law relating to Infant Life Protection, since the passing of the Local Government Act, 1929, has been administered by the Maternity and Child Welfare Authorities. These will now be known more generally as Welfare Authorities.

#### PART I. PREVENTION OF CRUELTY AND EXPOSURE TO MORAL AND PHYSICAL DANGER

Part II of the Children Act, 1908, as amended by the Children and Young Persons Act, 1932, and consolidated in Part I of the Children and Young Persons Act, 1933, is concerned with the Prevention of Cruelty to Children and Young Persons and Exposure to Moral and Physical Danger.

For the purposes of the Children and Young Persons Act, 1933, the expression "young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

A local authority or a Poor Law authority may institute proceedings under Part I of the 1933 Act for any offence in relation to a child or young person. (Sect. 98 (1).)

The pioneer movement in this connection was made in Liverpool by prominent nonconformists and catholics. It resulted, in 1881, in the formation of the first Society for the Prevention of Cruelty to Children, the Chairman of which was Mr. Frederick Agnew. This was the basis of the National Society founded by the Reverend Benjamin Waugh in 1884. In the same year the Liverpool Corporation framed by-laws under Sect. 23 of the Municipal Corporations Act, 1882, under which no child under the age of 13 could sell anything in the streets after 9 p.m. in the summer, or 7 p.m. in the winter, and no child under the age of 9 was allowed to sell at all. In 1889 the first Prevention of Cruelty to Children Act was passed, followed by an amending Act in 1894. In the following year, Liverpool established, during the Lord Mayoralty of Alderman W. H. Watts, the Police-aided

Clothing Association, to provide clothing for poor and destitute children selected by the police. In 1897, the question was again under the consideration of a Special Committee, and in 1898 Liverpool obtained a private Act of Parliament which prohibited children under 11 years of age from trading in the streets. All boys under 14 years of age and all girls under 16 years of age who desired to take part in street trading had to be licensed for that purpose, and no licensed child was permitted to trade after 9 p.m. They were to be properly clothed, must not obstruct pedestrians, nor enter a public house. The latter provision was inserted by the House of Lords. In 1902, further recommendations were approved and embodied in a Bill which became the Employment of Children Act, 1903. This was a general measure but it did not contain many of the sections of the Liverpool Act, and, consequently, was not a success. In 1904 the Prevention of Cruelty to Children Act was passed, amending and consolidating the previous Acts. By the Children Act, 1908, the Act of 1904 was repealed in certain particulars, and in others amended and added to. These provisions are now incorporated in Part I of the 1933 Act, and include the following—

By Sect. 1 provision is made for the punishment of any person who has attained the age of 16 who is guilty of cruelty to any children or young persons under that age, including direct ill-treatment, assault, abandonment, or exposure.

It is made penal to cause the death of infants by suffocation by persons over 16 years.

Other offences in relation to children and young persons, including causing them to beg, or under pretext of singing, playing, performing, offering anything for sale, or otherwise asking or receiving alms.

If any person having the custody or care of a girl under the age of 16 causes, or encourages, or favours the seduction or prostitution of or unlawful carnal knowledge of or the commission of an indecent assault upon a girl under the age of 16 years, he shall be guilty of a misdemeanour. (Sect. 2.)

Power is conferred on a Court of Summary Jurisdiction and constables to bind over a person having the custody of a young girl.

Any person allowing children to reside in or frequent a brothel may be punished. (Sect. 3.)

If any person gives, or causes to be given, intoxicating liquors (except for medicinal purposes or urgent cause) to children under the age of 5 years, he shall be liable to a fine not exceeding £3. (Sect. 5.)

The holder of a licence allowing children in the bar of the

licensed premises, except during the hours of closing, shall be liable to a penalty of £2 for the first and £5 for every subsequent offence. (Sect. 6.)

Sect. 7 of the 1933 Act which amends Part III of the Act of 1908, forbids the sale of tobacco or cigarette papers to a person apparently under the age of 16, unless he happens to be in the employment of a tobacco firm, or is a boy messenger in uniform employed by his company to make such purchases.

The sale of tobacco in any other form is likewise forbidden, except that the seller will not be guilty of an offence if he did not know and had no reason to believe that the tobacco was for the use of the person to whom it was sold.

It shall be the duty of a policeman and of a park-keeper being in uniform to seize any tobacco or cigarette papers in the possession of any person apparently under 16 years whom he finds smoking in any street or public place. (Sect. 7 (3).)

If it can be proved to the satisfaction of a Court of Summary Jurisdiction that any automatic machine for the sale of tobacco kept on any premises is being largely used by persons apparently under the age of 16, the owner of the machine or the person on whose premises the machine is kept may be ordered either to remove the machine, or to prevent its being used as may be specified in the Order. (Sect. 7 (2).)

If a pawnbroker takes any article in pawn from any person apparently under 14 years (in London and Liverpool under 16 years of age), he shall be guilty of an offence against the Pawnbrokers Act, 1872. (Sect. 8.)

Marine store dealers and traders of that class are prohibited from the purchase of old metal from any person apparently under 16 years of age. (Sect. 9.)

If a child under 7 loses its life by being left in a room containing an open fire-grate, not sufficiently protected, the person who has charge of it is liable to a fine not exceeding £10. (Sect. 11.) The local authorities will provide fireguards at cheap prices; and the public assistance authority free of cost to destitute persons.

Penalties are imposed for failing to provide for the safety of children attending entertainments where the number exceeds one hundred. (Sect. 12.)

Any constable may take into custody without warrant any offenders under the First Schedule of the Act; detain a child or young person in a place of safety; order the detention of habitual drunkards; and dispose of a child or young person by order of the Court. (Sect. 13.)

The Secretary of State may cause to be visited and inspected, by persons appointed by him, any institution supported by

voluntary contributions for the reception of poor children or young persons. These visitors may be voluntary.

## PART II. EMPLOYMENT

### GENERAL PROVISIONS AS TO EMPLOYMENT

The majority of the sections in Part II merely re-enact, with minor modifications introduced mainly with a view to simplification, the provisions of Part VIII of the Education Act, 1921, the Children (Employment Abroad) Acts, 1913 and 1930, and other enactments regarding the employment of school children.

By-laws regulating—

(a) The employment of children may be made by local authorities under Sects. 18 and 19.

(b) Street trading may be made under Sect. 20.

Contraventions are provided for by Sect. 21, and the method of making and confirming by-laws by Sect. 27. See also Local Government Act, 1933, Sect. 250.

By Sect. 22 restrictions are placed on children taking part in entertainments except as therein provided. Under Sect. 22, a local authority may grant a licence for a child who has attained the age of 12 years, and is residing in their area to take part in any specified entertainment or series of entertainments, subject to restrictions and conditions laid down by the Ministry of Education.

*The Education Act, 1936*, as from the appointed day, i.e. 1st September, 1939, applied Sections 18 and 22 to all children who are required to attend school. (Sect. 6.)

On the other hand, licences for training juveniles to take part in or for juveniles being trained for dangerous performances under Sect. 24 will be granted by petty sessional Courts, not by local authorities. Powers of entry to prevent breaches of by-laws are given by Sect. 28.

Sect. 23 re-enacts the substance of the Dangerous Performances Act, 1879 and 1897, which are repealed. Sect. 25 makes various minor amendments of the Children (Employment Abroad) Act 1930. The functions of local authorities under this Part consist mainly of making by-laws and granting licences.

The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blackening, and other like occupations carried on in streets or public places; and a person who assists in a trade or occupation carried on for profit shall be deemed to be employed, notwithstanding that he receives no reward for his labour. (Sect. 30.)

Sect. 107 (1) provides that: For the purpose of this and the principal Act the expression "'young person' means a person who has attained the age of 14 years and is under the age of 17 years," and in the definitions of "young person" in Sect. 49 of the Summary Jurisdiction Act, 1879, as amended by Sect. 124 of the Criminal Justice Act, 1925, "seventeen" shall be substituted for "sixteen."

## EMPLOYMENT OF CHILDREN

Sect. 18 of the Act, as amended, provides that—

(1) Subject to the provisions of this section and of any by-laws made thereunder, no child shall be employed—

(a) until he has attained an age of not less than two years below that at which under the enactments relating to education children cease to be of compulsory school age; or

(b) before the close of school hours on any day on which he is required to attend school; or

(c) before 6 o'clock in the morning or after 8 o'clock in the evening of any day; or

(d) for more than two hours on any day on which he is required to attend school; or

Provided that this subsection shall not prevent a child from taking part in an entertainment under and in accordance with the provisions of a licence granted and in force under this Part of this Act.

(e) for more than two hours on any Sunday; or

(f) to lift, carry or move anything so heavy as to be likely to cause injury to him.

(2) A local authority may make by-laws with respect to the employment of children, and any such by-laws may distinguish between children of different ages and sexes, and between different localities, trades, occupations and circumstances, and may contain provisions—

(a) authorizing—

(i) the employment of children before they attain the age at which employment ceases to be prohibited under paragraph (a) of the last foregoing subsection by their parents or guardians in light agricultural or horticultural work;

(ii) employment of children (notwithstanding anything in paragraph (b) of the last foregoing subsection) for not more than one hour before the commencement of school hours on any day on which they are required to attend school;

(b) prohibiting absolutely the employment of children in any specified occupation;

(c) prescribing—

(i) the age below which children are not to be employed;

(ii) the number of hours in each day, or in each week, for which, and the times of day at which, they may be employed;

(iii) the intervals to be allowed to them for meals and rest;

(iv) the holidays or half-holidays to be allowed to them;

(v) any other conditions to be observed in relation to their employment;

so, however, that no such by-law shall modify the restrictions contained in the last foregoing subsection save in so far as is expressly permitted by

paragraph (a) of this subsection, and any restriction contained in any such by-law shall have effect in addition to the said restrictions.

(3) Nothing in paragraph (c) or in paragraph (d) of subsection (1) of this section, or in any by-law made under this section, shall prevent a child from taking part in an entertainment under and in accordance with the provisions of a licence granted and in force under the provisions of this part of this Act.

Reference should also be made to the Young Persons (Employment) Act, 1938.

## POWER OF LOCAL AUTHORITY TO MAKE BY-LAWS WITH RESPECT TO EMPLOYMENT OF PERSONS UNDER EIGHTEEN OTHER THAN CHILDREN

Sect. 19 is as follows—

(1) Subject to the provisions of this section, a local authority may make by-laws with respect to the employment of persons under the age of eighteen years other than children, and any such by-laws may distinguish between persons of different ages and sexes, and between different localities, trades, occupations and circumstances and may contain provisions prescribing—

- (a) the number of hours in each day or in each week for which, and the times of day at which, they may be employed;
- (b) the intervals to be allowed to them for meals and rest;
- (c) the holidays or half-holidays to be allowed to them;
- (d) any other conditions to be observed in relation to their employment.

(2) Nothing in this section shall empower a local authority to make by-laws with respect to—

- (a) employment in or about the delivery, collection, or transport of goods, except in the capacity of van boy, errand boy, or messenger;
- (b) employment in or in connection with factories, workshops, mines, quarries, shops, or offices, except in the capacity of van boy, errand boy, or messenger;
- (c) employment in the building or engineering trades, except in the capacity of van boy, errand boy, or messenger;
- (d) employment in agriculture;
- (e) employment in domestic service, except as non-resident daily servant;
- (f) employment in any ship or boat registered in the United Kingdom as a British ship or in any British fishing boat entered in the fishing boat register.

(3) This section shall not come into operation until such date as may be appointed by an Order of the Secretary of State, and the Secretary of State shall not make such an order until a draft thereof has been laid before both Houses of Parliament and has been approved by resolutions passed in the same session of Parliament by both Houses.

An amending Act operates from the 1st January, 1937, to allow the employment of women and young persons 16 and over on the shift system by permission of the Secretary of State during



specified hours. Provision must be made for clothing, accommodation, food and transport facilities and further education.

## STREET TRADING

Sect. 20 provides that—

(1) No person under the age of sixteen shall engage or be employed in street trading—

Provided that by-laws made under this section may permit young persons who have not attained the age of sixteen years to be employed by their parents in street trading.

(2) A local authority may make by-laws regulating or prohibiting street trading by persons under the age of eighteen years, and by-laws so made may distinguish between persons of different ages and sexes and between different localities, and may contain provisions—

(a) Forbidding any such person to engage or be employed in street trading unless he holds a licence granted by the authority and regulating the conditions on which such licences may be granted, suspended, and revoked;

(b) determining the days and hours during which, and the places at which, such persons may engage or be employed in street trading;

(c) requiring such persons so engaged or employed to wear badges;

(d) regulating in any other respect the conduct of such persons whilst so engaged or employed.

## ENTERTAINMENTS AND PERFORMANCES

By Sect. 22 restrictions are placed on children taking part in entertainments. A local authority may grant a licence for a child who has attained the age of 12 years and is residing in their area to take part in any specified entertainment or series of entertainments, subject to restrictions and conditions laid down by the Minister of Education.

On the other hand, licences for training juveniles to take part in or for juveniles being trained for dangerous performances under Sect. 24 may be granted by a petty sessional court, not by local authorities. Power of entry to prevent breaches of by-laws is given in Sect. 28. Sect. 24 re-enacts the substance of the Dangerous Performances Acts, 1879 and 1897, which are repealed. Sect. 25 makes various amendments of the Children (Employment Abroad) Act, 1913, as amended by the Children (Employment Abroad) Act, 1930. The functions of local authorities under this Part consist mainly of making by-laws and granting licences.

The expression "Performance of a dangerous nature" includes all acrobatic performances and all performances as a contortionist.



Sect. 30 provides that for the purpose of this part of this Act and of any by-laws made thereunder—

The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing or performing for profit, shoe-blackening and other like occupations carried on in street or public places;

A person who assists in a trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labours.

Sect. 107 provides that in this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them—

"Young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

"Child" means a person under the age of fourteen years;

"Guardian" in relation to a child or young person, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person.

Penalties and legal proceedings in respect of general provisions as to employment are contained in Sect. 21.

### PART III. PROTECTION OF CHILDREN AND YOUNG PERSONS IN RELATION TO CRIMINAL AND SUMMARY PROCEEDINGS

This Part of the Act constitutes probably the most important Part, and holds the same position in the 1933 Act as the Part dealing with the Reformatory and Industrial (now Approved) Schools did in the 1908 Act. This Part has been grouped as follows—

1. General Provisions as to Preliminary Proceedings. (Sect. 31 to 35.)
2. General Provisions as to Proceedings in Court. (Sect. 36 to 39.)
3. Special Procedure with regard to Offences specified in First Schedule. (Sect. 40 to 43.)
4. Principles to be observed by all Courts in dealing with Children and Young Persons. (Sect. 44.)
5. Juvenile Courts. (Sect. 45 to 49.)
6. Juvenile Offenders. (Sect. 50 to 60.)
7. Children and Young Persons in need of Care or Protection. (Sect. 61 to 63.)
8. Refractory Children and Young Persons. (Sect. 64 to 65.)
9. Supplemental. (Sect. 66 to 76.)

## I. GENERAL PROVISIONS AS TO PRELIMINARY PROCEEDINGS

Sect. 31 provides that arrangements shall be made for preventing a child or young person while detained in a police station, or while being conveyed to or from any criminal Court, or while waiting before or after attendance in any criminal court, from associating with an adult (not being a relative) who is charged with any offence other than an offence with which the child or young person is jointly charged, and for ensuring that a girl (being a child or young person) shall while so detained, being conveyed, or waiting, be under the care of a woman.

Sect. 32 provides for bail where a person apparently under the age of 17 years is apprehended, with or without a warrant, in all cases unless—

- (a) The charge is one of homicide or other grave crime; or
- (b) It is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
- (c) The officer has reason to believe that his release would defeat the end of justice.

Sect. 33 provides that any Court, on remanding or committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody in a Remand Home named in the commitment. Such a commitment may be varied in cases of unruly or depraved characters.

Sect. 34 provides for the attendance at Court of parent or guardian of a child or young person charged with an offence.

Sect. 35 provides that notice of charges against and applications relating to children and young persons shall be sent to the

- (a) Probation officer for the probation area; and
- (b) Local authority for the district in which the child or young person is resident.

Under Sect. 35 this will not be necessary where a local or poor law authority proposes to bring him before a Court. But, in all cases where a poor law authority bring a child before a Court, such information as to the home surroundings, school record, health, and character of the child or young person as appears to them to be likely to assist the Court, and, where the Court so direct, they shall also inquire and report as to available approved schools. (Approved schools take the place of reformatory and industrial schools.) This clearly is a new duty for relieving officers.

**2. GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT**

Sect. 36 provides that no child (other than an infant in arms) shall be permitted to be present in Court during the trial of any other person charged with an offence, or during any proceedings preliminary thereto, except during such times as his presence is required as a witness or otherwise for the purpose of justice.

Sect. 37 gives power to clear a Court when a person, who, in the opinion of the Court, is a child or young person, is called as a witness.

Sect. 38 provides that where, in any proceedings against any person for any offence, any child of tender years called as a witness does not, in the opinion of the Court, understand the nature of an oath, his evidence may be received, though not given on oath, if, in the opinion of the Court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

Sect. 39 gives power to the Court in relation to any proceedings in any Court which arise out of any offence against, or any conduct contrary to, decency or morality, to prohibit the publication of certain matter in newspapers.

**3. SPECIAL PROCEDURE WITH REGARD TO OFFENCES SPECIFIED IN FIRST SCHEDULE**

Sect. 40 enables a Justice of the Peace to issue a warrant authorizing any constable named therein to search for the child or young person, if it appears to the Justice on information on oath laid by any person who, in the opinion of the Justice, is acting in the interests of the child or young person, that there is reasonable cause to suspect—

(a) That the child or young person has been, or is being, assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause him unnecessary suffering or injury to health; or

(b) That any offence mentioned in the First Schedule to the Act has been, or is being committed, in respect of the child or young person.

Sect. 41 gives power to the Court to proceed with cases in any proceedings with relation to any of the offences mentioned in the First Schedule to the Act, if the Court is satisfied that the attendance before the Court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case.

Sect. 42 extends the power to take depositions of a child or young person where a Justice of the Peace is satisfied by the

evidence of a duly qualified medical practitioner that the attendance before the Court of any such child or young person, in respect of whom any of the offences mentioned in the First Schedule to this Act is alleged to have been committed, would involve serious danger to his life or health.

Sect. 43 provides for the admission as evidence of either for or against a deposition of a child or young person taken under the conditions set out in the previous section without further proof thereof if it purports to be signed by the Justice by or before whom it purports to be taken.

#### 4. PRINCIPLES TO BE OBSERVED BY ALL COURTS IN DEALING WITH CHILDREN AND YOUNG PERSONS

Sect. 44 lays down as general considerations that every Court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

It is further provided that a Court shall not order a child under the age of 10 years to be sent to an Approved School unless for any reason, including the want of a fit person of his own religious persuasion, who is willing to undertake the care of him, the Court is satisfied that he cannot suitably be dealt with otherwise.

#### 5. JUVENILE COURTS

Sects. 45 to 49 of the 1933 Act deal with the improvement of the constitution of Juvenile Courts on the lines recommended by the Young Offenders Committee.

One of the most noteworthy features of Part III of the Children and Young Persons Act, 1933, is the provision of Juvenile Courts, which were first started under the Children Act, 1908.

In certain States of America there are magistrates for the purpose, as at Denver, Colorado. The first Children's Court with a Probation Officer, in this country, was established at Birmingham. The Juvenile Courts (Metropolis) Act, 1920, secured an advance both in the treatment of children and in the co-operation of women in public affairs.

Juvenile Courts throughout the country are placed on a statutory basis, and are not to be held in a building mainly or exclusively used either as a police station or for the holding of ordinary Courts, without the special approval of the Secretary of State.

By a change in the definition of "young person," Juvenile Courts will be able to deal with persons under 17 instead of under 16 as before.

**The Constitution of Juvenile Courts.** The Second Schedule of the 1933 Act makes provision for the constitution of Juvenile Courts.

#### OUTSIDE METROPOLITAN AREAS

1. (1) The provisions of this paragraph shall have effect with respect to juvenile courts outside the metropolitan police court area and the City of London.

(2) Subject to the provisions of the next succeeding sub-paragraph, a panel of justices specially qualified for dealing with juvenile cases shall be formed for the purposes of this Act in every petty sessional division, and no justice shall be qualified to sit as a member of a juvenile court unless he is a member of such a panel.

(3) The Secretary of State, after considering any representations made to him by the justices of the petty sessional divisions concerned, may by order direct that there shall be only one panel for any two or more petty sessional divisions and may by the same or a subsequent order provide for sittings of juvenile courts constituted from that panel being held at such places, whether within or without the petty sessional division for which the court is for the time being acting, as may be specified in the order.

An order under this sub-paragraph may contain such supplemental, incidental and consequential provisions as appear to the Secretary of State to be necessary or proper for the purposes of the order, and may be varied or revoked by a subsequent order.

(4) Rules made by the Lord Chancellor shall provide—

(a) for the formation and periodical revision of panels of justices;

(b) for limiting the number of justices who may sit as members of any juvenile court, and for the manner in which they are to be selected;

(c) for one of the justices acting as chairman of the court and for the manner in which the chairman is to be selected.

#### IN METROPOLITAN POLICE COURT AREA

2. (1) His Majesty may by Order in Council specify as respects the metropolitan police court area the places in which Juvenile Courts are to sit, and assign as a division to each such place such portion of that area as may be specified in the Order.

(2) Every Juvenile Court in the metropolitan police court area shall be constituted of a metropolitan police magistrate nominated by the Secretary of State to act as Chairman of Juvenile Courts within the said area and two justices of the peace for the county of London, one of whom shall be a woman, and both of whom shall be selected, in such manner as may be directed by Order in Council, from a panel of such justices nominated from time to time by the Secretary of State.

#### IN THE CITY OF LONDON

3. Juvenile Courts for the City of London shall be constituted in such a manner as the Court of the Lord Mayor and Aldermen of the City may from time to time determine.

It was necessary in selecting for service on the panels in Juvenile Courts to see that the right kind of men and women

with knowledge and sympathetic understanding of young people in the walk of life to which those who were brought before them were most likely to belong.

It is impossible to lay down any hard and fast rule about the age of any particular magistrate, but it is most desirable to select for the Juvenile Courts, the best, most active, wisest, most patient, and most sympathetic magistrates. The offenders with whom these Courts deal are always young. Perhaps seventy-five does not understand the modern boy and girl so well as forty-five does.

It should be possible that women should sit in every one of these Juvenile Courts.

**Procedure in Juvenile Courts.** A Juvenile Court may sit on any day for the purpose of hearing and determining a charge against a child or young person in respect of an indictable offence.

Sect. 46 (3) provides that—

The Lord Chancellor may make rules for regulating the procedure in Juvenile Courts.

No person shall be present at any sitting of a Juvenile Court, except—

- (a) Members and Officers of the Court;
- (b) Parties to the case before the Court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
- (c) *Bona fide* representatives of newspapers or news agencies;
- (d) Such other persons as the Court may specially authorize to be present.

Provided that Juvenile Courts for the City of London shall sit at such place or places as the Court of the Lord Mayor and Aldermen of the City may from time to time determine.

Provisions are made with respect to remands and bail in cases where a Juvenile Court has remanded a child or young person for the purpose of considering the manner in which he shall be dealt with.

The Juvenile Courts (Constitution) Rules, 1934 (S.R. & O., 1934, No. 273/L3) dated 13th March, 1934, were made by the Lord Chancellor under paragraph 1 of the Second Schedule to the Children and Young Persons Act, 1933, for the constitution of Juvenile Courts outside the Metropolitan Police Court area and the City of London.

Sect. 47 provides that—

(1) Juvenile Courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other Act.

(2) A Juvenile Court shall not without the approval of the Secretary of State sit—

(a) In a building mainly or exclusively used as a police station, or for the holding of Courts not being Juvenile Courts.

(b) In a room ordinarily used for the holding of Courts not being Juvenile Courts.

Juvenile Courts constituted under the Acts shall sit as often as is necessary—

(i) To hear charges against children and young persons. (Sect. 46).

(ii) To hear applications, the hearing of which is by rules assigned to Juvenile Courts. (Sect. 47 (e).)

(iii) To exercise any other jurisdiction conferred on Juvenile Courts by this or any other Act, and such Courts shall be deemed to be Petty Sessional Courts. (Sect. 45.)

Newspapers are not to publish name, address, or school or any other means of identifying any child before a Juvenile Court.

## 6. JUVENILE OFFENDERS

The two principal changes made by Part V of the Children Act, 1908, were that juvenile offenders are distinguished from the adult, and that the parent or guardian is made responsible for the offences of the child. This has been supplemented by the Children and Young Persons Act, 1933, Part III, and the provisions are summarized as follows—

1. It shall be conclusively presumed that no child under the age of 8 years can be guilty of any offence. (Sect. 50.)

2. No conviction or finding guilty of a child or young person shall be regarded as a conviction of felony for the purposes of any disqualification attaching to felony. (Sect. 51.)

3. Restrictions on punishment of children and young persons include—

(a) A child shall not be ordered to be:

(i) imprisoned; or

(ii) sent to penal servitude for any offence; or

(iii) committed to prison in default of payment of a fine, damages, or costs.

(b) A young person shall not be sent to penal servitude for any offence.

(c) A young person shall not be ordered to be:

(i) imprisoned for an offence; or

(ii) committed to prison in default of payment of a fine, damages, or costs, unless the Court certifies he cannot be detained in a Remand Home.

4. Sentence of death shall not be pronounced or recorded against any person under the age of 18 years. (Sect. 53 (1).)

5. Substitution of custody in a Remand Home for imprisonment. (Sect. 54.)

6. Power to order parent to pay fine, etc., instead of child or young person. (Sect. 55.)

7. Any Court by or before whom a child or young person is found guilty of an offence other than homicide, may, if they think fit, remit the case to a Juvenile Court. (Sect. 56 (1).)

8. The Secretary of State has power to send certain juvenile offenders to Approved Schools.

9. Additional powers of any Court with respect to a child or young person found guilty of an offence punishable in the case of an adult with imprisonment include power—

(a) To order him to be sent to an Approved School.

(b) To commit him to the care of a fit person whether a relative or not, who is willing to undertake to care for him. (Sect. 57.)

10. The word "conviction" and "sentence" shall cease to be used in relation to children and young persons dealt with in a summary manner. (Sect. 59.)

11. The general power of Courts of Summary Jurisdiction to punish by whipping any male child convicted summarily of any indictable offence is retained. (Sect. 60 and Schedule III.)

Effect is given to the recommendation of the Young Offenders Committee that where a child or young person is for any reason tried by a Court which is not a Juvenile Court, there should be power to send the case to a Juvenile Court to decide what method of treatment should be applied.

Information as to the home life of children before the court is to be obtained either through probation officers or education officers. The most general form of treatment will be supervision under probation, sending to residential schools, boarding out by committal to the care of the local authority.

## 7. CHILDREN AND YOUNG PERSONS IN NEED OF CARE OR PROTECTION

Children and young persons who require care or protection, or who have committed offences, are dealt with in Sects. 61 to 65. For those needing care or protection, the Act provides a substitute for the limited categories of neglect prescribed in the Children Act, 1908, by a more general definition of neglect on the lines recommended by the Young Offenders Committee.

"Poor Law authority" is defined in Sect. 107 as "the council of a county or county borough, and includes a joint committee of two or more such councils established under Sect. 3 of the Poor Law Act, 1930." No provisions for administration are inserted, and these functions will not be functions under the Poor Law Act, 1930. Hence, they will not stand referred under Sect. 4 (2) of that Act, but the council must fall back upon its general powers in Sect. 22 of the Municipal Corporations Act, 1882, and Sect. 2 of the Local Government Act, 1888.

"Local Authorities," as defined by Sect. 96 as amended for the purpose of the powers and duties conferred or imposed by this Act, means the local education authorities.



The functions will be exercised in the City of London by the Common Council, except the granting of licences for children to take part in entertainments, which are powers and duties of the London County Council in their capacity as the local education authority.

**Authority or Person to take Action.** Under Sect. 58 of the Children Act, 1908, it was the function of the police authority to take steps for the protection of juveniles.

Under Sect. 62 of the 1933 Act, if

- (a) any local authority; or
- (b) any constable; or
- (c) any authorized person, e.g. the Royal Society for the Prevention of Cruelty to Children

have reason to believe that a child or young person comes within any of the descriptions mentioned, they may bring him or her before a Juvenile Court.

It is clear that relieving officers are in an excellent position for drawing the attention of Juvenile Courts to cases needing their attention. The fact that a child or young person is found destitute, or is found wandering without any settled place of abode and without visible means of subsistence, will be evidence that he is exposed to moral danger, and therefore comes within the provision.

**Definition of Authorized Person.** The expression "authorized person" means any officer of a society which is authorized by general or special order of the Secretary of State to institute proceedings under this section, and any person who is himself so authorized. (Sect. 62 (4).)

Power is given—

- (a) by Sect. 64 of the Act to a parent or guardian; and
- (b) by Sect. 65 to a Poor Law authority

to bring a child or young person who is refractory before a Juvenile Court with a view to sending him to an Approved School.

**Definition of "In Need of Care and Protection."** This is defined by Sect. 61 as amended as—

- (a) A child or young person who having—
  - (i) no parent or guardian; or
  - (ii) a parent or guardian unfit to exercise care and guardianship; or
  - (iii) a parent or guardian not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger or beyond control; or
- (b) a child or young person who—
  - (i) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or
  - (ii) being a member of the same household as a child or young person in respect of whom such an offence has been committed; or

(iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or

(iv) being a female member of a household whereof a member has committed an offence under the Punishment of Incest Act, 1908, in respect of another female member of that household; or

(c) a child in respect of whom an offence has been committed under Section 10 of this Act (which relates to the punishment of vagrants preventing children from receiving education).

**Decision of Court.** It is further enacted that a Juvenile Court, if satisfied that the child or young person comes within any of the descriptions mentioned in the Act, may either—

(a) Order him to be sent to an Approved School; or

(b) Commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or

(c) Order his parent or guardian to enter into a recognizance to exercise proper care and guardianship; or

(d) Without making any other order, or in addition to making any order under either of the two last preceding paragraphs, make an order placing him for a specified period, not exceeding three years, under the supervision of a probation officer, or of some other person appointed for the purpose by the Court.

What the Act did was to enable authorized persons to take before the Juvenile Courts any child under 17 who was falling into bad associations or moral danger, or was getting out of control.

For example, in the case of children whose mothers were prostitutes. Since the children were often well fed and clothed, it was impossible previously to take any action to counteract this bad influence on the child without recourse to the High Court. Now the child can be placed under the supervision of an inspector to a specially Approved School on the authority of the magistrate.

The purpose of hearing such cases *in camera* is to prevent the name or address of the child being commonly known, and so casting a stigma on one who is not an offender, but offended against. Parents have the right to appeal to Quarter Sessions, and magisterial decisions are subject to the supervision of the Home Secretary, who will, undoubtedly, intervene if necessary.

If Vagrancy Authorities were required to keep a register of children passing through their wards, a valuable check would be provided on this serious aspect of vagrancy administration. Useful experience would also be afforded as to the utility of the extension of compulsory registration to other vagrants.

**Child Vagrancy.** On the 24th July, 1936, the Home Secretary issued a Circular to local authorities aiming at a diminution of child vagrancy by drawing their attention to their powers. The Master of a Casual Ward should immediately notify the local

education authority and police of a child received whose parents are thought likely to have prevented the child from receiving education and the local education authority only where the child is considered to be otherwise in need of care and protection.

### 8. REFRACTORY CHILDREN AND YOUNG PERSONS

The provision of Sect. 58 (5) of the Children Act, 1908, with regard to refractory children maintained in or boarded out from a school or other institution belonging to a Poor Law authority, will now be found in Sect. 65, with some slight amendments.

Sect. 64 provides that children beyond the control of their parents or guardians may by Order of a Juvenile Court be sent to any Approved School, or placed for a specified period, not exceeding three years, under the supervision of a Probation Officer, or of some other person appointed for the purpose by the Court.

The main effect on probation officers will be the enforcement of the principles that a full report should be provided to the Courts on the circumstances of juvenile offenders, and that a supervision order should be made when suitable and the conditions enforced.

### 9. SUPERVISION BY PROBATION OFFICERS

**Supplemental.** Where a Court makes an order under the provisions of Part II of the Act, placing a child or young person under the supervision of a probation officer or of some other person.

(1) That officer or person shall, in accordance with Sect. 66, while the order remains in force—

(a) Visit, advise, and befriend him, and

(b) When necessary, endeavour to find him suitable employment, and

(c) May, if it appears to his interests so to do, at any time while the order remains in force, and he is under the age of 17, bring him before a Juvenile Court, and

(2) That Court may, if they think that it is desirable in his interests so to do,

(i) order him to be sent to an Approved School; or

(ii) commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

The main changes are—

1. That the Juvenile Court shall have jurisdiction to deal with all cases of neglect up to the age of 17, instead of 14 as previously;

2. That an ordinary Court by which a person has been convicted of cruelty or any of the various sexual offences against a child or young person may direct that the child shall be brought before a Juvenile Court as needing care or protection; and

3. That it is the *duty* of the local education authority, instead of the police, to bring neglected children before a Juvenile Court, unless they are satisfied that proceedings are undesirable in the interest of the child, or some of the persons taking the proceedings.

**Places of Safety.** Sect. 67 provides for the removal or remand of any child or young person to a place of safety. This has particular reference to those—

1. In respect of whom any offence mentioned in the First Schedule to the Act has been, or is believed to have been, committed; or

2. Who is about to be brought before a Juvenile Court in accordance with the provisions of Part III of the Act of 1933; and

3. So taken to a place of safety; and any child or young person who has taken refuge in a place of safety may be detained there until he can be brought before a Juvenile Court. (Sect. 67 (1).)

A child or young person may be detained by a Juvenile Court under an Interim Order operative for not more than twenty-eight days. (Sect. 67 (2).)

#### PART IV. REMAND HOMES, APPROVED SCHOOLS, AND PERSONS TO WHOSE CARE CHILDREN AND YOUNG PERSONS MAY BE COMMITTED

##### REMAND HOMES

Sect. 77 imposes on the council of every county and county borough the duty of providing remand homes, which may be situate either within or without the area, and for that purpose they may arrange with the occupiers of any premises for the use thereof. This superseded Sect. 108 of the Children Act, 1908.

Places of detention under the Children and Young Persons Act, 1933, Sects. 77 and 78, are now known as Remand Homes. A child or young person who is on remand or committed for trial may be committed to a Remand Home. (Sect. 77 (3).) A child or young person may be sentenced for punishment instead of to prison. (Sect. 78 (2).) Such homes must be either specially established, or the police authorities may arrange with the occupiers of existing premises or institutions for their use. Grants are made by the Treasury on the Certificate of the Secretary of State towards the expenses of the local authority in respect of Remand Homes.

Where a Remand Home cannot be provided, it is considered that the simplest and cheapest method is in the use of voluntary homes, police officers' houses, or other similar arrangements.

##### APPROVED SCHOOLS

The Act also deals with the changes recommended by the

Young Offenders Committee in the administration of the schools previously certified under the Children Act, 1908, for the training of neglected and delinquent children and young persons.

The Act abolishes the distinction between industrial and reformatory schools and groups them together under the title of Approved Schools, which are to be classified by the Secretary of State according to the needs and circumstances of the pupils. It is now provided that the normal period of detention in an approved school shall be three years, but that children sent to an approved school before reaching the age of 11 may be detained until they reach school-leaving age. In the case of young persons it will also be three years, but not in any case till beyond the age of 19. The Home Secretary will be empowered to order a further detention for six months for vocational training.

### CERTIFIED SCHOOLS

Part IV of the Children Act, 1908, defined an Industrial School as a school for the industrial training of children in which children are lodged, clothed, and fed as well as taught. A Certified School meant a reformatory or industrial school which was certified in accordance with the provisions of this part of this Act. Children are committed by the Justices of the Peace who, in conjunction with the local authority, decide to which school the child shall be sent. A Day Industrial School was a school in which industrial training, elementary education, and one or more meals a day, but not lodging, were provided. A Certified Day Industrial School was deemed to be a certified efficient school within the meaning of the Education Act, 1921. Sect. 170 (1) of that Act defined a Certified Efficient School as a school suitable for providing elementary education for blind, deaf, defective, or epileptic children, and any workhouse school certified to be efficient by the Ministry of Health, and any public or State-aided elementary school in Scotland, and any national school in Ireland. It included also any elementary school not conducted for private profit, and open at all reasonable times to the inspection of His Majesty's inspectors, and required the like attendance for its scholars as required in a public elementary school.

Part IV of the Children Act, 1908, dealt with Reformatory and Industrial Schools, and was the backbone of the whole Act. It repealed the existing Reformatory and Industrial Schools Acts, and re-enacted them with amendments and additions. It was a great step in advance, if only to amalgamate them into one Act. Ragged Schools were the first type of these institutions. In 1756 the Marine Society founded an institution for the protection of the children of convicts. In 1776 the Philanthropic Society were

given charge of boys sentenced to transportation or long terms of imprisonment, who had been granted a conditional pardon. In 1818 John Pounds founded a Ragged School at Portsmouth, followed by Dr. Guthrie, in Glasgow, the Rev. (afterwards Canon) Major Lester, and Father (afterwards Monsignor) Nugent, in Liverpool. These efforts resulted in the establishment of certified schools throughout the United Kingdom.

### REFORMATORY SCHOOLS

A Reformatory School meant a school for seniors, to which were sent for industrial training youthful offenders, being between the ages of 12 and 16, convicted of an offence, punishable, in the case of an adult, with penal servitude or imprisonment, and who would have served a term in prison. In those schools the actual delinquents were lodged, clothed, fed, and taught. The period of detention was from three to five years, but not after the delinquent had attained the age of 19. If under 19 on discharge they remained under the supervision of the school managers until 19 years of age. In 1854 the Young Offenders Act, providing for vagrants under 15, was passed, while the Home Secretary was empowered to certify Reformatory Schools. In the same year the Redhill Farm Colony was founded by the Philanthropic Society. In 1856 the Reformatory and Industrial Schools Act was passed, which provided that young persons should not be sent to a school to which the parents objected if another was available. This was followed in 1866 by the Reformatory Schools Act, which repealed, consolidated, and amended the previous Acts. In 1893, Lord Leigh's Reformatory Schools Act raised the age from 10 to 12, and the term of admission from two to three years as a minimum. This Act was followed by the Reformatory Schools Act, 1899, which rendered it illegal to sentence a youthful offender to penal servitude. The Youthful Offenders Act, 1901, made certain regulations, tending to reduce the number of very young offenders sent to reformatories rather than to industrial schools, and gave powers to a Court to make an order on the parent or guardian for contribution to the child's support, enforced summarily "as an order of affiliation."

### INDUSTRIAL SCHOOLS

An Industrial School meant a school for juniors, in which industrial training was provided and children were lodged, clothed, fed, and taught up to the age of 14. Those schools were intended for children who may not actually have committed an offence, but whose circumstances were such that if left in their surroundings they were likely to join the delinquent population.

The legislation relating to industrial schools commenced with the Young Offenders Act, 1854, which enabled a Sheriff or Magistrate to commit vagrant children, although they were not charged with an offence. The Industrial Schools Act, for England and Wales, 1857, provided that children above 7 and under 14, convicted of vagrancy, might be committed to a certified school. The inspectors were appointed by the Home Office. In 1860 and 1861 was passed the Consolidating Act, which enlarged the scope of the previous Acts. In 1866 the Industrial Schools Act was passed, which embodied most of the previous provisions, and by new regulations provided that a child under 14, being a destitute orphan, or with a surviving parent undergoing penal servitude or imprisonment, could also be sent to these schools. The age limit was raised from 15 to 16 years. A contribution order may be made on the parent or guardian as above, also enforceable "as an order of affiliation."

### DAY INDUSTRIAL AND TRUANT SCHOOL

A Day Industrial and Truant School meant a school where the children did not reside but where they received one or more meals per day, their elementary education, and a certain amount of industrial training. The system was introduced by the Elementary Education Act, 1876. The majority of these schools are owned and managed by voluntary bodies. The responsibility of finding and bringing the children before the Court rests with the local education authority and the police.

### ADMINISTRATION OF APPROVED SCHOOLS

The local authority is the local education authority.

The approved schools of Great Britain are administered by inspectors appointed by the Home Secretary. The schools are voluntary, being conducted by private associations or local authorities. The schools are maintained by Treasury grants-in-aid on the recommendation of the Secretary of State, contributions from local authorities, and payments by parents and guardians regulated by the Children and Young Persons Act, 1933. Other sources of income include profits from industrial work, and charitable subscriptions and donations.

### OBJECTS OF APPROVED SCHOOLS

These Acts provide for children beyond the control of their parents, for refractory children in a Poor Law Institution, and for the enforcement of school attendance orders under the Education Act, 1944. Reformatory and industrial schools overlapped

in that an actual delinquent under 12 years and not previously convicted could be sent to an industrial school. The period of detention could not be beyond 16 years of age, while they remained under the supervision of managers until 18 years of age. Children liable to be sent under the old Acts were those found wandering or not under proper guardianship. The Children Act, 1908, provided that any person could bring before a Petty Sessional Court any child apparently under the age of 14 who was found begging or receiving alms; was found wandering; was found destitute, not being an orphan; was under the care of a parent or guardian who was criminal or drunken; was the daughter of a father convicted of an offence in respect of any of his children under the Criminal Law Amendment Act, 1885; frequented the company of a reputed thief or common or reputed prostitute; was lodging or residing in a house used by a prostitute for prostitution. The police are now required to take proceedings in these cases. There were also industrial training ships, such as the *Wellesley* at South Shields, to which magistrates might commit children under Sect. 58 of the Act.

## DEFINITION OF APPROVED SCHOOLS

Sect. 107 of the Act is as follows—

In this Act the expression "approved school" means a school approved by the Secretary of State under Section seventy-nine of this Act.

The provisions contained in the Fourth Schedule to this Act shall apply in relation to approved schools and persons sent thereto.

## TRANSITORY PROVISIONS

Sect. 108 and Fifth Schedule provide that—

(6) This Act shall apply in relation to a school which at the commencement of the Act of 1932 was a certified reformatory school or a certified industrial school as if the certificate of the school were a certificate of approval issued under this Act.

(7) The Secretary of State may, if he thinks fit, approve for the purpose of this Act any school which, on the 12th day of July, 1932, was a certified industrial school, and if he so approves any such school, the provisions of this Act shall apply in relation to that school and to children previously sent, or thereafter to be sent, thereto, subject to such adaptations, modifications and exceptions as he may from time to time by order direct.

## PROVISION OF SCHOOLS BY LOCAL AUTHORITIES

Sect. 80 provides that—

(1) A local authority may, with the approval of the Secretary of State, undertake, or combine with any other local authority in undertaking, or contribute such sums of money upon such conditions as they may think



fit towards the purchase, establishment, building, alteration, enlargement, rebuilding or management of an approved school.

Provided that, before giving his approval, the Secretary of State shall satisfy himself that the proposed expenditure is reasonable and, where it is proposed to purchase, build, or establish a new school, that there is a deficiency of approved school accommodation which cannot properly be remedied in any other way.

(2) In the event of a deficiency of approved school accommodation, it shall be the duty of every local authority concerned to take, either alone or in combination with other local authorities, appropriate steps under this section to remedy the deficiency.

## CONTENTS OF APPROVED SCHOOL ORDER

By Sect. 70 (7), an order for sending a child or young person to an approved school made on the application of a local authority will state that it is so made. By Sect. 70 (3) (b), it will also state whether the local or Poor Law authority, or the probation officer or the police authority is responsible for conveying the child or young person to the school. The person conveying a person to an approved school will have the powers, protection, and privileges of a constable. (Fourth Schedule, par. 13.) A Court before making an Approved School Order shall endeavour to ascertain the religious persuasion of the child or young person. (Sect. 68.)

The Court is required to send to the school a record containing any information in its possession that may be material.

Approved School Order means an order made by a Court sending a child or young person to an approved school. (Sect. 107 (1).)

## DURATION OF APPROVED SCHOOL ORDERS

Under the Children Act, 1908, persons may be sent to industrial schools until they reach the age of 16, and to reformatory schools for periods ranging from three to five years. It is now provided that the normal detention period in an approved school shall be three years, but that children sent to an approved school before reaching the age of 11 may be detained until they reach the school-leaving age. In the case of young persons it will also be three years, but not in any case till beyond the age of 19. The Home Secretary will be empowered to order a further detention for six months for vocational training. (Sect. 71.)

## SUPERVISION AND RECALL AFTER EXPIRATION OF ORDER

Sect. 71 provides that—

(1) A person sent to an approved school shall after the expiration of the period of his detention be under the supervision of the managers of his school—

(a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;

(b) if he has at the expiration of that period attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

### CLASSIFICATION, ADMINISTRATION, AND MANAGEMENT

Sect. 81 provides that the Secretary of State may classify approved schools according to the age of the persons for whom they are intended, the religious persuasion of such persons, the character of the education and training given therein, their geographical position, and otherwise as he thinks best calculated to secure that a person sent to an approved school is sent to a school appropriate to his case, or as may be necessary for the purposes of this Act.

### PROVISIONS AS TO CONTRIBUTIONS TOWARDS EXPENSES

Sects. 86 to 89 deal with the recovery of the expenses of maintenance of a child or young person in an approved school.

Under Sect. 86, the parents or step-parents of a child or young person sent to an approved school or committed to the care of a person must contribute towards the cost of his maintenance. The contributions will be payable to the council of the county or county borough in which the person liable is residing *if* the child or young person is committed to the care of a local authority, or is ordered to be sent to an approved school. Subject to prescribed deductions for the services rendered (*viz.* 10%), sums so received must be paid over by the council to the Home Office. (Sect. 86 (3).) Orders for obtaining contributions will be made at the request of the local authority named in the order, in accordance with Sect. 86. Further provisions for enforcement are contained in Sect. 87.

These provisions do not apply where the Approved School Order is made on the application of a Poor Law authority in its capacity as such. (Sect. 89 (4).)

Local authorities specified in approved school orders must contribute in accordance with Sect. 90.

But this does not apply where the order is made—

(a) On the application of a Poor Law authority in its capacity as such; or

(b) By reason of the commission of an offence under Sect. 10 of this Act; or

(c) Relates to a child or young person stated in the order to have been resident outside England.

The sending of the child or young person to an approved school will not affect any order made under Sect. 19 of the Poor Law

Act, 1930, or any power of the Poor Law authority to obtain such an order; and for the purpose of the law relating to affiliation orders he will be regarded as still in receipt of relief. (Sect. 88 (4).)

By Sect. 90 (5), the Poor Law authority will make such contributions to the managers of the school as the Secretary of State may determine to be reasonable, regard being had to the average expenses of the managers (including establishment and administrative expenses) fairly attributable to persons of the classes mentioned.

Under Sect. 80, a local authority may, with the approval of the Secretary of State, undertake or combine with any other local authority in undertaking, or contributing to, the provision of an approved school. They must do so if there is a deficiency of approved school accommodation.

Expenses incurred under this Act by the council of a county or county borough as Poor Law authority are to be regarded as expenses of administering the Poor Law Act, 1930. (See Sect. 96 (4).)

### CONTRIBUTIONS TO BE MADE BY PARENTS, GUARDIANS, AND OTHERS IN RESPECT OF A CHILD OR YOUNG PERSON SENT TO AN APPROVED SCHOOL

Sect. 86 of the Act is as follows—

(1) Where an order has been made by a Court committing a child or young person to the care of a fit person, or for sending him to an approved school, it shall be the duty of the following persons to make contributions in respect of him, viz.: and that duty shall be enforceable in accordance with the provisions of the next succeeding section:

- (a) his father or stepfather;
- (b) his mother or stepmother; and

(c) any person who, at the date when any such order as aforesaid is made, is cohabiting with the mother of the child or young person, whether he is his putative father or not.

(2) Where the child or young person has been committed to the care of a fit person not being a local authority, contributions under this section shall be payable to that person to be applied by him in or towards the maintenance, or otherwise for the benefit, of the child or young person.

(3) Where the child or young person has been committed to the care of a local authority, or ordered to be sent to an approved school, the contributions shall be payable to the council of the county or county borough within which the person liable to make the contributions is for the time being residing, and shall be paid over by the council to the Secretary of State at such times and in such manner, but subject to such deductions in respect of the services rendered by the council, as may be prescribed.

(4) Any sums received by the Secretary of State under the last succeeding subsection shall be applied in such manner as the Treasury may direct as appropriations in aid of moneys provided by Parliament for the purposes of this Act.

# CONTRIBUTIONS BY LOCAL AUTHORITIES IN RESPECT OF PERSONS SENT TO APPROVED SCHOOLS

It is provided by Sect. 90 of that Act that—

(1) Subject to the provisions of this section the local authority named in an approved school order as being the authority within whose district the person to whom the order relates was resident, or within whose district the offence was committed, or the circumstances arose rendering him liable to be sent to an approved school, shall make in respect of him, throughout the time during which he is under the care of the managers of an approved school, such contributions to the expenses of the managers of his school as may be prescribed for this purpose different contributions may be prescribed in relation to different circumstances and in relation to different schools or classes of school.

(2) A Court by which an approved school order is made shall cause a copy thereof to be served forthwith on the local authority named in the order and, if that authority desire to contend that the person to whom the order relates was resident in the district of some other local authority, or was resident outside England, they may, by notice in writing given at any time within three months after the service upon them of the order, appeal—

(a) if the order was made by a petty sessional Court, to a Court of summary jurisdiction acting for the same petty sessional division or place; and

(b) if the order was made by a Court which was not a petty sessional Court, to a Court of summary jurisdiction having jurisdiction in the place where the court sat, or in the place from which the person to whom the order relates was committed for trial,

and if, upon the hearing of the appeal, the Court are satisfied that the person to whom the order relates was resident in the district of that other local authority, or was resident outside England, the Court may by order vary the approved school order by substituting therein the name of that other authority, or, as the case may be, a statement that the said person was resident outside England.

Notice of any appeal under this subsection shall be given to the other local authority concerned, if any, and to the clerk of the Court, and the clerk of the Court shall give to the parties to the appeal fourteen days notice of the date fixed by the Court for the hearing thereof.

(3) Any person aggrieved by any order made under the preceding subsection may appeal to quarter sessions, and for the purposes of this subsection a refusal to make such an order shall be deemed to be an order.

(4) An order made under this section by a Court of summary jurisdiction or by a Court of quarter sessions shall have effect retrospectively as from the making of the approved school order, and all necessary payments by way of adjustment shall be made accordingly.

(5) The foregoing provisions of this section shall not apply in relation to an approved school order which

(a) is made on the application of a poor law authority in its capacity as such; or

(b) is made by reason of the commission of an offence under section one hundred and eighteen of the principal Act (which relates to the punishment of vagrants preventing children receiving education); or

(c) relates to a child or young person stated in the order to have been resident outside England,

but in the first mentioned case the poor law authority on whose application the order is made shall, throughout the periods during which the child

or young person belongs to either of the following classes of persons, that is to say—

- (i) persons under the care of the managers of an approved school, not being persons out on licence or under supervision;
- (ii) persons out on licence or under supervision from an approved school,

make such contributions in respect of him to the expenses of the managers of his school as the Secretary of State may determine to be reasonable, regard being had to the average expenses of the managers (including establishment and administrative expenses) fairly attributable to persons belonging to the class in question.

(6) In determining for the purposes of this section the place of residence of a child or young person, any period during which he resided in any place as an inmate of a school or other institution, or while boarded out under this Act by a local authority to whose care he has been committed, or in accordance with the conditions of a recognizance, shall be disregarded.

### FIT PERSONS

Sects. 75, 76, 84, and 86 make provision as to orders committing a child or young person to the care of a fit person. In this section the expressions "child" and "young person" mean a person with respect to whom such an order is in force, irrespective of whether at the date of the making of the order, or at any subsequent date while the order is in force, he was, or is, a child or young person. (Sect. 84 (1).)

Previously managers of industrial schools could board out children under 8 with foster parents. The Act provides that, in future, children under 10 shall not as a rule be sent to these schools, and gives the Courts power to commit these younger children to the care of the local education authority, who will be responsible under the new provisions for boarding them out with suitable foster parents.

Every order shall embody a declaration

- (a) as to the age;
- (b) as to the religious persuasion

of the child or young person. (Sect. 75 (2).)

Every order shall, subject to the provisions of the Act, remain in force until he attains the age of 18 years. (Sect. 75 (3).)

The person to whose care the child or young person is committed shall, whilst the order is in force, have the same rights and powers and liabilities as if he were his parent. (Sect. 75 (4).)

Power is also given by this Act to commit a child or young person to the care of the local authority. (Sect. 76 (1).)

The Secretary of State may, if he thinks fit, make rules as to the manner in which children and young persons so committed are to be dealt with, and as to the duties of the persons to whose care they are committed, and may cause any children or young

persons committed to the care of a local authority to be visited from time to time. (Sect. 84 (2).)

A local authority may board out children and young persons committed to their care for such periods and on such terms as to payment and otherwise as they think fit. (Sect. 84 (3).)

A local authority may apply to a Juvenile Court to have any boy or girl who has been committed to their care sent to an approved school. (Sect. 84 (5).)

The Secretary of State may at any time in his discretion discharge a child or young person from the care of the person to whose care he has been committed, and any such discharge may be granted either absolutely or subject to conditions. (Sect. 84 (4).)

The Secretary of State, in any case where it appears to him for the benefit of a child or young person, may empower the person to whose care he has been committed to arrange for his emigration. (Sect. 84 (5).)

Power is further given to commit any child or young person for the care of whom it is the duty of the Minister of Pensions under Sect. 9 of the War Pensions Act, 1918, to commit such child or young person to the care of the Minister. (Sect. 76 (2).)

Consideration shall be had to the religious persuasion of the person to whom the child or young person is committed. (Sect. 84 (7).)

#### PART V. HOMES SUPPORTED BY VOLUNTARY CONTRIBUTIONS

Part V gives effect to the recommendations made by the third Report of the Child Adoption Committee in 1926, and provides for the registration and inspection of voluntary homes.

The expression "voluntary homes" means "any home and other institution for the boarding, care, and maintenance of poor children or young persons, being a home or institution supported wholly or partly by voluntary contributions, but does not include any institution, house, or home certified or approved by the Board of Control under the Mental Deficiency Acts, 1913 to 1927, unless children or young persons who are not mental defectives within the meaning of those Acts are received therein." (Sect. 92.)

The Secretary of State is required to be notified of any voluntary home, and to require the person in charge to send particulars with respect to the home as may be prescribed, either—

1. Within three months after the commencement of the Act; or
2. Within three months from the establishment of the home; and
3. To send particulars in every subsequent year before such date as may be prescribed. (Sect. 93 (1).)

The Secretary of State may cause any voluntary home to be inspected from time to time unless the home is one which is a

whole, otherwise subject to inspection by, or under the authority of, a Government department. (Sect. 94 (1).)

If the Secretary of State is satisfied that

- (1) the management of any voluntary home; or
- (2) the accommodation provided for; or
- (3) the treatment of

the children therein, is such as to endanger their welfare, he may serve upon the persons responsible for the management of the home such general or special directions with respect to the matters aforesaid, or any of them, as he thinks expedient for the welfare of the children and young persons in the home. (Sect. 95.)

The Secretary of State may, with the consent of the council of any county, county borough, or county district, appoint officers of that council to conduct inspections on his behalf.

#### PART VI. SUPPLEMENTAL

Part VI contains general provisions and various amendments of the Probation of Offenders Act, 1907, and of the Act of 1908.

1. A local authority or a Poor Law authority may institute proceedings for any offence under this Act, or under Part I of the Children Act, 1908. (Sect. 98 (1).)

2. Any such authority may appear by their clerk or other officer duly authorized in that behalf in any proceedings instituted by them under this Act. (Sect. 98 (2).)

3. The provisions of the Summary Jurisdiction Acts shall extend to rules under this Act. (Sect. 101.)

4. Appeals to Quarter Sessions from orders of a Court of Summary Jurisdiction under this Act may be brought in the cases and by the persons specified in Sect. 102.

#### EXPENSES OF LOCAL AUTHORITIES

Sect. 96 of the Act provides that—

(3) Expenses incurred under this Act by a local education authority shall be defrayed as expenses under the enactments relating to education.

(4) Expenses incurred under this Act by the council of a county or county borough, exclusive of any expenses to be defrayed in accordance with the last preceding subsection, shall be defrayed—

(a) in the case of expenses incurred by the council in their capacity of poor law authority, as expenses of administering the Poor Law Act, 1930; and

(b) in any other case, as expenses for general county purposes or as the case may be, out of the general rates.

## ACQUISITION OF LAND BY LOCAL AUTHORITIES

Sect. 96 of the Act as amended by the Local Government Act, 1933, 11th Schedule, provides that a local authority may, for the purposes of their functions under this Act, acquire, dispose of, or otherwise deal with land in accordance with the provisions of Part VII of the Local Government Act, 1933.

## LOANS BY LOCAL AUTHORITIES

Sect. 96 (6) as amended by the Local Government Act, 1933, 11th Schedule, provides that a local authority may borrow for the purposes of this Act—

in the case of the London County Council, under and in accordance with the London County Council (Finance Consolidation) Act, 1912, as amended by any subsequent enactment, and, in the case of any other local authority, under and in accordance with Part IX of the Local Government Act, 1933.

## EXCHEQUER GRANTS

Sect. 86 provides—

(1) There shall be paid out of money provided by Parliament—

(a) such sums on such conditions as the Secretary of State with the approval of the Treasury may recommend towards

- (i) the expenses of the managers of an approved school;
- (ii) the expenses of a local authority in respect of children and young persons committed to their care;
- (iii) the expenses of a council of a county or county borough in respect of children and young persons in remand homes established and maintained by them either alone, or jointly with any other council;

(b) any sums by which any education grants under any other Act are increased by reason of the additional powers and duties conferred or imposed by this Act upon local authorities for elementary education

(c) any expenses incurred by the Secretary of State in the Administration of the Act.

Expenditure under the Act qualifies for Grant from either the Minister of Education or the Home Office according to whether it is educational expenditure or otherwise. Expenditure on young people over compulsory school age ranks for Grant from the Home Office and also in respect of all children and young persons in respect of remand homes, collection of parental contributions, boarding out, and approved schools. Expenditure on children of compulsory school age ranks for Grant from the Ministry of Education as education expenditure unless aided by Grant from the Home Office. The Home Office Grant is 50 per cent of the net approved expenditure. To qualify for full Grant the parental contribution must not exceed 15s. per week except with the



express approval of the Home Office. Where the local authority sends its cases to outside schools their contribution to the school is approximately one-half the full cost of maintenance and thus represents a Grant of 50 per cent of their expenditure. The rise in cost is due to the increase in capital expenditure.

### SCHEDULES

*First.* Offences against children and young persons with respect to which the Special Provisions of the Act apply. *Second.* Constitution of Juvenile Courts. *Third.* Amendments of certain enactments relating to criminal proceedings and summary jurisdiction. *Fourth.* Provisions as to administration of approved schools and treatment of persons sent thereto. *Fifth.* Transitory provisions. *Sixth.* Enactments repealed.

### THE ADOPTION OF CHILDREN ACT, 1930

This Act is based on the Reports of the Hopkinson and Tomlin Committees which reported in 1924. The Act is a long one and its machinery is largely concerned with the discretion of the High Court, to whom belongs the jurisdiction to make adoption orders. At an applicant's option and subject to rules, the County Court or any Court of Summary Jurisdiction, within whose area either the applicant or the infant concerned resides, may be enabled to deal with applications for adoption orders. The Court may make postponements and interim orders for periods up to two years by way of experiments, and require other safeguards in the interests of the child. The Registrar-General must establish and maintain at the General Register Office a register to be called the Adopted Children Register.

### THE LEGITIMACY ACT, 1926

This Act provides that where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of the Act, the marriage shall, if the father of the illegitimate person was, or is, at the date of the marriage, domiciled in England or Wales, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens. Nothing in the Act shall operate to make legitimate a person whose father or mother was married to a third person when the illegitimate person was born.

### CHILDREN AND YOUNG PERSONS ACT, 1938

This Act amends and extends the Act of 1933 by increasing the powers of justices in relation to children or young persons brought before them. It is designed to strengthen the powers of Juvenile

Courts and probation officers in dealing with cases coming before the Court.

Previously, in dealing with refractory juveniles the Courts could make only a supervision order or an approved school order. They may now be placed in the care of a fit person willing to undertake the duty.

Hitherto, if application was made for the revocation of an order placing a child under the care of a fit person the Court had only the option to refuse the application or grant it and lose control of the case. It is now possible to substitute a "supervision" order for the "fit person" order and thus still keep in touch with the case. The probation officer may then supervise the case for three years or until the age of 18.

The Court may now send a child being dealt with for non-attendance at school to a remand home or other place of safety under an interim order. This facilitates medical and psychological examinations to be made, inquiries into character and home conditions, and the real causes of absence from school. If facilities are not available for any necessary medical treatment in a remand home or place of safety, a child or young person may be removed to a place where such attention can be given.

The Court may now authorize a person to bring a child before the Court. This will meet those exceptional cases where a parent refuses to do so, and it is anticipated that the potential power will obviate having to put it into operation, because unless the Court is in session the authorized person takes a risk of being accused of unlawful detention for taking possession of the juvenile.

In addition to their power of committal to an approved school or to the care of a fit person, in truancy cases the Court may now make a supervision order, operating for not less than three years. In suitable cases the child may, therefore, remain with parents under normal home conditions. The absence of authority to insert special provisions as to residence and other matters in supervision orders has been remedied by granting this power to the Courts. Such orders may now be varied or extended as occasion requires.

The power of dealing with juvenile offenders upon further hearing of cases has been extended, so that where a Court has found that a child or young person is in need of care and protection, or is beyond the control of a parent, or is refractory, it may be used as evidence at an adjourned hearing of a case. As there may be some change in the magistrates at the further hearing of the case the time of the Court will thus be economized by the avoidance of a repetition of what took place at the previous Court.

## SECTION VI

### PUBLIC ASSISTANCE

#### CHAPTER XXIII

##### PUBLIC ASSISTANCE

#### PART I. POOR LAW

**History of Poor Law.** The beginning of the Poor Law is dealt with at length in *Public Assistance* (Pitman). The reasons for the great statute of Elizabeth, the Poor Relief Act, 1601, were the result of the abolition of the monasteries by Henry VIII, a series of bad harvests during the reigns of Henry VIII, Edward VI, and Elizabeth, together with the debasement of the coinage, which increased the cost of living by reducing the purchasing power of the currency. The early Poor Law aimed just as much at suppressing vagabondage as at relieving distress. In making provision for the latter, it endeavoured to remove any excuse for the former. The Act, 43rd Elizabeth, 1601, required "Overseers of the Poor" to raise in each parish a stock "for setting the poor on work," to put poor children out as apprentices, and to furnish relief for the indigent poor. The churchwardens of every parish were, by the Act of 1601, *ex-officio* overseers of the poor for their parish, and these overseers were to include not less than two, nor more than four, "substantial householders," specially appointed as overseers each year by the Justices of the Peace. Each separate parish was required to maintain its own poor.

The rise of the law of Poor Law settlement in accordance with the Act of 1662 gave the parish authorities power to apply to two Justices of the Peace for an Order to remove from the parish, within 40 days after their arrival, all persons likely to become chargeable to the Poor Rate, unless they inhabited a tenement of the annual value of £10 or over, or gave security to the satisfaction of the Justices.

Orders for the removal of paupers were recklessly made. By refusing to build or allow to be built any cottages of less than £10 annual value, the landowners effectively kept down the increase of population within their parishes and sowed the seeds of the housing problem in rural areas which has become so very acute in our own day. As a consequence, litigation between

parishes became very prevalent and still continues between the Public Assistance authorities to-day, although the Local Government Act, 1929, has greatly diminished this.

The necessity for a larger area to be taken for Poor Law purposes became apparent, and this was met by the creation of Guardians of the Poor and the early Unions under Gilbert's Act, 1782. Immediately after the passing of the Reform Act, 1832, a Royal Commission was appointed to inquire into the administration of the Poor Laws. As a result of their Report, the Poor Law "Charter" (the Poor Law Amendment Act, 1834) was passed. Parishes were combined into Unions, and the Overseers were relieved of the responsibility for poor relief. Boards of Guardians were created, and the central control was placed in the hands of Poor Law Commissioners, afterwards the Poor Law Board, which, in 1871, was merged into the Local Government Board. In 1919 the Ministry of Health took over the powers and duties of the Board. The Local Government Act, 1894, abolished the *ex-officio* Guardians, plural vote, elective property qualification, and proxies. Voting was to be by ballot at the election of Board of Guardians, whose sanitary powers were transferred to the Rural District Council. Every Rural District Councillor was to represent his parish on the Board of Guardians of the Union within which his district was situated. On the 31st March, 1927, the office of Overseer was abolished under the Rating and Valuation Act, 1925, and his functions transferred in the main to the Rating Authorities. In accordance with the Local Government Act, 1929, Part I, the Boards of Guardians were abolished as from the 1st April, 1930, and Public Assistance Authorities were constituted for county and county borough areas.

### PROPOSALS FOR REFORM OF THE POOR LAWS

A Royal Commission was appointed on the 4th December, 1905, to inquire into the working of the laws relating to the relief of poor persons in the United Kingdom, and into the various means which have been adopted outside of the Poor Laws for meeting distress arising from want of employment, particularly during periods of severe industrial depression.

Two reports were published under date 4th February, 1909, viz. the Majority Report, signed by fourteen members, and the Minority Report, signed by four members.

The chief reasons for reform, as stated in the Reports, were that pauperism was as rife as it was 40 years before; the expenditure on poor relief had grown out of all proportion to the number relieved; the calibre and ability of the average Guardian was not high enough, through lack of interest in elections, so that business

was frequently mismanaged, and a great deal of distress was left untouched by the Poor Law; and also that the Union bore no definite relation to the areas of other authorities who were performing functions overlapping the work of the Guardians.

There were certain **Unanimous Recommendations**, including those for the abolition of Boards of Guardians and the enlargement of the area of administration from the Union to the county and county borough.

Other unanimous recommendations were that classified institutions should be provided instead of the general mixed workhouse, and that charitable aid should be organized. Improved administration of out relief should be undertaken and Old Age Pensions provided. Children should be removed from workhouses. Labour Exchanges should be established with a State insurance scheme against sickness and unemployment. It was also recommended that the central control should be extended, the number of higher officials increased, and that the Unemployed Workmen Act, 1905, should be discontinued.

**The Majority Recommendations** (other than the above) included the creation of Public Assistance Authorities instead of Boards of Guardians, viz., Committees of County or County Borough Councils for administration purposes. These should set up Public Assistance Committees to be nominated partly by Urban and Rural District Councils and Voluntary Aid Councils to deal with applicants. There should also be established Voluntary Aid Councils and Voluntary Aid Committees to act as intermediaries between public assistance and charity. County and Local Medical Assistance Committees should be created to provide medical relief on a provident basis. Institutional treatment should be curative and restorative, with periodical revision of cases. Outdoor relief should be adequate to needs, subject to careful supervision, the case paper system should be adopted in all areas, and a Public Assistance Service should be established with qualifying examinations for higher positions.

**The Minority Recommendations** (other than the above) included the provision that the non-able-bodied should be dealt with by existing committees of the County and County Borough Councils, viz., Education Committee: children of school age; Health Committee: sick and permanently incapacitated, infants under school age, aged needing institutional care; Asylums Committee: mentally defective of all grades and ages; and Pensions Committee: aged to whom pensions are awarded. These Committees should be supervised by the appropriate Government Departments. The able-bodied should be dealt with by an authority charged only with this specific duty. Unemployment should be under the

control of a Minister for Labour charged with the duties previously referred to, together with the training of unemployed and control of Parliamentary funds for national schemes, including afforestation. Registrars of Public Assistance should be appointed for local areas to prevent overlapping of services.

**County Councils Association Recommendations.** The County Councils Association in 1911 devised a scheme of County Poor Law Committees constituted by the County Councils, with subordinate District Poor Law Boards. This scheme was approved by almost all the signatories of both the Majority and Minority Reports of the Royal Commission of 1909.

The Local Government Committee (the Maclean Committee) appointed by the Ministry of Reconstruction, reported in January, 1918. It recommended the abolition of Boards of Guardians and the Poor Law Unions, and the transference of the functions of these bodies to the County Councils and County Borough Councils.

**Resolution of the House of Commons, 1925.** The case for reform was crystallized in a resolution passed by the House of Commons on 27th May, 1925, as follows—

That, in view of the costly overlapping of services and duplication of establishments in the various branches of public provision for the children, the sick, the aged, and the unemployed able bodied, and as a necessary preliminary to the much-needed revision of the grants-in-aid in relief of the burdens now pressing so heavily on local authorities and on industry, it is essential that any measure dealing with the Poor Law should be framed generally on the lines of the Report of the Committee of 1917 on the Transfer of Functions of Poor Law Authorities in England and Wales; and this House accordingly urges that the bill which it is intended to prepare and circulate to the local authorities this autumn should at least provide for a complete absorption of the existing Poor Law authorities and their functions in the County, Borough, and District Councils.

**Government Proposals.** Government proposals were issued in January, 1926. The objects which it was sought to attain were, briefly—

1. The co-ordination and improvement of the provision for the prevention and treatment of ill-health, both institutionally and otherwise, and the inclusion in this provision of all public assistance required for sickness, accident, and infirmity.

In county boroughs a complete unification of the health services could be secured, and, as regards administrative counties, there was contemplated a concentration in the council of a general responsibility for the administration of health services in the hands of Borough and District Councils acting within the county.

2. The co-ordination of all forms of public assistance, and especially an improved correlation between Poor Law relief and present unemployment benefit.

3. The decentralization of the responsibility at present falling on the Minister of Health.

4. The simplification of the financial relations between the Ministry and the local authorities, and the freeing of the local authorities from the financial restrictions in matters of detail, which are a necessary concomitant of the present system.

5. The correction of certain anomalies of historic origin, such as the association of the registration service (births, deaths, and marriages) with the provision for the relief of the poor.

Further Government proposals for the reform of Local Government were published in June, 1928, as explained in Chapter III, and included recommendations respecting the administration of the Poor Law. The proposals were on the lines of those embodied in the Provisional Proposals circulated in January, 1926. Subsequently the Local Government Act, 1929, was passed, Parts I and VII being concerned with the Poor Law. These provisions are now incorporated in the Poor Law Act, 1930.

### CENTRAL CONTROL

The Central Authority is the Minister of Health, who has comprehensive powers of regulating the action of the Public Assistance Authorities. The Minister supervises the general management of all matters relating to the execution of the Poor Laws by the issue of "General Orders" and "Special Orders." These "Orders" (subject to a certain control) have in many cases the force and effect of a statute. But these Orders can always be challenged by *certiorari*; the ordinary method of challenging the exercise of official discretion. (*R. v. Oldham Union*, 1847, 10 Q.B., 700.) The Minister advises Public Assistance Authorities in their doubts and difficulties. He arbitrates between different Public Assistance Authorities or between an authority and its officers. This is especially important in deciding questions of liability for rate-aided maintenance. The Minister appoints District Auditors, who are civil servants of the State and who audit the Poor Law accounts of all Public Assistance Authorities. These auditors have power to disallow all payments which are illegal, and to surcharge those members of the authorities who voted in favour of the resolution directing the illegal payment, or the persons responsible therefor.

### PUBLIC ASSISTANCE AUTHORITY

The object of Part I of the Local Government Act, 1929, was to secure more efficient and economical service in the administration of the Poor Law, and, at the same time, to meet the new conditions which will arise as a result of the rating reform.

The main alterations in the existing law and practice of Poor Law administration which were effected by the Act, and which are now incorporated in the Poor Law Act, 1930, may be outlined as follows—

1. **Local Authority.** As from 1st April, 1930, the functions of the Poor Law authorities were transferred to the councils of counties and county boroughs. Each county and county borough is a complete unit, but entire areas may be combined for any purpose.

2. Within six months after the passing of the Act, the council of every county and county borough was required to prepare, and submit to the Minister of Health in anticipation of the date of the Act coming into operation, a scheme of administrative arrangements for the discharge of its new functions.

3. Such schemes were to include provisions—

(a) For the delegation or reference of any new functions (apart from the power of raising a rate or of borrowing money) either to an existing committee of the council or to a committee specially constituted for the purpose. The committee is called the *Public Assistance Committee*, and may contain non-members of the council up to one-third of the total membership of the committee.

(b) For the division of the county area into districts and for the establishment of local sub-committees of any committee to which any of the transferred functions are delegated or referred. These local sub-committees outside county boroughs are known as *Guardians Committees*, and consist of—

(i) members of the district councils;

(ii) members of the County Council for the electoral divisions in the area, to the extent of a maximum of one-third;

(iii) persons (not being elected members of the County Councils and including women as well as men) appointed by the County Council.

Every scheme or amendment thereof is subject to the approval of the Minister of Health.

The *Guardians Committee* deal with matters relating to applications for relief. The sub-committee of the Public Assistance Committee of a county borough can apparently be given any name, and be appointed for any purpose. The sub-committee must include women amongst their co-opted members, and although it is not expressly laid down that former Guardians should be appointed, the Act states that "regard shall be had to the desirability" of including such persons. It may be remarked that the designation "*Guardians*" Committee is not a particularly happy one, and a more appropriate and less irritating title might have been selected. The Minister of Health has



stated that he is advised that the Public Assistance Committee cannot legally intervene to reverse the decision of a Guardians Committee as to the amount of outdoor relief which is granted in any particular case or to alter the amount of such relief.

Voluntary bodies which had hitherto received grant aid from the Boards of Guardians, whether for assistance in individual case work or after-care, or for maintaining a Mutual Register of Assistance, have to look to these councils for grant aid. An opportunity is thus afforded for new effort to organize voluntary personal service work alongside Public Assistance and Guardians Committees.

It is open to County and County Borough Councils to delegate Poor Law functions transferred to them to existing committees. For example, assistance to mothers, and children under five years of age, might be a matter for the Maternity and Child Welfare Committee of the council. The education of "Poor Law" children might be dealt with by the Education Committee. The maintenance of children in institutions might also be undertaken by such committees, but the cost would not attract an education grant from the Exchequer.

Sect. 2 of the 1929 Act provides that (a) the functions of Guardians under Part I (Infant Life Protection) of the Children Act, 1908, should be discharged by the councils of counties and county boroughs as functions under the Maternity and Child Welfare Act, 1918, except that where the Council of a district have established a Maternity and Child Welfare Committee, the said functions shall, in that district, be discharged by the council of the district and not by the County Council. This is now regulated by the Public Health Act, 1936, Part VII, and the functions are to be discharged by the Welfare Authorities; and (b) functions relating to vaccination shall be discharged by the councils of counties and county boroughs as functions relating to public health. Sect. 5 of the 1929 Act provides that an administrative scheme shall have regard to the desirability of securing that, as soon as circumstances permit, all assistance which can lawfully be provided otherwise than by way of poor relief shall be so provided.

4. Where the council of a county district is a divisional educational executive or an authority for maternity and child welfare, the County Council have power, and it is expected that they will normally find it convenient to exercise it, to delegate to the council of such county district the local handling of questions relating to the education of Poor Law children and assistance to mothers and children under the age of five years, subject to such conditions as may be agreed upon between the two authorities.

Power is given for different Public Assistance authorities to

combine for the provision of an institution which neither singly might be able to afford, but which may be essential in isolated cases. Express power is given to the County Councils for the provision of hospitals and maternity homes, or for the making of subscriptions or donations to existing hospitals and institutions.

5. Separate accounts are kept by the council of every county and county borough of their receipts and expenditure in respect of the functions transferred to them under the 1929 Act, and these are audited by the District Auditor of the Ministry of Health.

The scheme in relation to the Poor Law applies to London, subject to modifications resulting from the different arrangements in the Metropolis, for education and maternity and child welfare. The Metropolitan Asylums Board has ceased to exist and the London County Council has become responsible for the services maintained by the Board. The Metropolitan Common Poor Fund also ceased to exist, as the cost of the relief of the poor will be spread over the county through the County Rate.

Part VII relates to the transfer of property, liabilities, and officers from the Guardians to the councils, and deals with the questions of the adjustment of the ownership of Poor Law property, conditions of transfer of officials, and the determination of matters connected with compensation and superannuation.

At the time of the passing of the 1929 Act there were outstanding some £6,000,000 borrowed by Boards of Guardians under the authority of the Ministry of Health and under mortgage of their revenues, of which sum no less than £4,000,000 was owing by four Unions. The Act provides that the responsibility for the loans shall be transferred to the county and county borough councils, that they shall be re-paid over a period of fifteen years instead of ten as originally provided, that no interest shall be charged, and that, where the annual charge for repayment would amount to more than the equivalent of a 9d. rate on the reduced rateable value, the balance shall be remitted by the Treasury.

**Births, Deaths, and Marriages.** In addition to these duties, the former Boards of Guardians appointed and paid the Registrars of Births and Deaths, who were the officers appointed to administer the Registration of Births, etc., Act, 1874, and its amendments. The Poor Law Union constituted the district for the registration of births, deaths, and marriages, administered by a Superintendent Registrar, who was usually (but not always) the Clerk to the Guardians. The Registrars of Marriages were appointed by the Superintendent Registrar. Each Union was divided into as many sub-districts as the Registrar-General deemed necessary, and a Registrar was appointed for each by the Board of Guardians. Both the Superintendent Registrar and

the Registrars might be dismissed by the Registrar-General, who is under the jurisdiction of the Minister of Health.

Owing to the supersession of Boards of Guardians under Part I of the Local Government Act, 1929, it was necessary to transfer to the newly-constituted authorities the duty of employing and paying registration officers.

Part II of the Local Government Act, 1929, provides for the transfer of the functions of the Guardians under the Registration Acts to councils of counties and county boroughs. Registration officers have formerly derived their remuneration entirely from the fees received, and the changing times have seriously affected their position in some areas. It is provided, therefore, that on a vacancy occurring in the office of the registration officer the office shall become a salaried one, and, further, that existing officers may apply to become salaried officers. In the event of the office becoming a salaried one, the fees received will be paid to the council. The Minister of Health may increase by not exceeding 50 per cent any of the fees fixed by the Registration Acts, but in the case of a registration officer who has not elected to become a salaried officer, any increase of fees received as the result of an Order of the Ministry of Health must be paid to the council concerned. Although the functions under this Part of the Act were transferred on the 1st April, 1930, schemes for the full reorganization of districts and administration for the purposes of the Registration Acts were not required from the councils until the 1st April, 1932, or such later date as the Minister may allow.

**Meetings.** Meetings of the Public Assistance Authority are usually held weekly, but an extraordinary meeting may be called on the requisition of the Chairman and an agreed number of members.

**Committees.** The Public Assistance Authority acts principally through committees. The committees of a typical provincial Authority include Finance and General Purposes, House Visiting, Hospital Visiting, Women's, Children's Welfare, Boarding-out, and District Relief Committees. The Relief Committee considers each case upon the report of the Relieving Officer, and the applicant may be called upon and may claim to appear in person. The various institutions are sometimes under the control of separate committees.

## POWERS AND DUTIES

The principal duty of the Public Assistance Authority is to administer the Poor Laws within the area over which it has control. In December, 1926, the Joint Committee of the Houses of Parliament unanimously decided that it was desirable to proceed

with the Consolidation of the Poor Laws, for which a Bill had been introduced into the House of Lords. Subsequently the Poor Law Act, 1927, was passed. Consequent on the coming into operation of the Local Government Act, 1929, the Poor Law Act, 1927, was almost entirely repealed and included in the Poor Law Act, 1930, which came into operation on 1st April, 1930. The administration is uniform and the statutes are the least permissive of any Local Government Law.

**Principles of Poor Relief.** The Public Assistance Committee decide the form of relief to be given in accordance with the provisions contained in the Statutes and Orders. The principles of poor relief may be summarized as follows—

1. Relief is provided by the State for its own protection and as a remedy against the evils of destitution. Destitution implies that a subject is for the time being without material resources directly available and appropriate for satisfying his physical needs, whether actually existing or likely to arise immediately. By physical needs are meant such needs as must be satisfied in order to maintain life, or in order to obviate, mitigate or remove causes endangering life or likely to endanger life or impair health or bodily fitness for self-support.

2. The relief provided should be repressive, by making it morally repulsive, and severe in the treatment of the idle, immoral, and vicious.

3. Remedial provision should be made to rear, educate, and train children who are without proper protection and care. Certain relatives are liable for the maintenance of persons who are destitute and unable to work.

**Method of Poor Relief.** The relief provided is indoor, outdoor, or medical relief.

**THE PUBLIC ASSISTANCE ORDER, 1930**, now controls, in general, the administration of relief. By this Order all rules, orders, and regulations relating to the relief of the poor, whether general or special, save those set out below, were rescinded as from the 1st April, 1930. The additional Orders which are still operative are: Poor Law Institutions (Mental Defectives) Order, 1917; Relief Regulation Order, 1930; Public Assistance (Certificate of Chargeability) Order, 1930; Public Assistance Accounts (County Councils) Regulations, 1930; Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930; the Casual Poor Order, 1932.

**INDOOR OR INSTITUTIONAL RELIEF** is maintenance supplied in accordance with the Public Assistance Order, 1930. Such relief is provided in workhouses or institutions, workhouse infirmaries or separate infirmaries, district sick asylums, homes for aged poor, and casual wards. Provision is made for children in district or

separate schools, scattered homes, and by boarding out. Children over three years of age are excluded from institutions in which other poor persons are treated, and cottage homes and special or joint institutions are provided.

OUTDOOR RELIEF OR DOMICILIARY ALIMENT or HOME ASSISTANCE is maintenance wholly or in part by means of an allowance in money or kind in accordance with the Relief Regulation Order, 1930. It includes also payment of funeral expenses, allowance in money or kind to widows, women deserted by their husbands or whose husbands are in the Army, Navy or Air Force, payment of expenses of children attending Poor Law schools, or the provision of work for able-bodied males. When outdoor relief is granted to the able-bodied unemployed the Public Assistance Authority is expected to make provision for the training or setting to work of those relieved. Poor persons engaged in relief work are not workers within the Workmen's Compensation Acts. Relief on loan may be granted, and this has constituted an important feature in certain areas during the current industrial depression. Relief in kind prevents the head of the family from arranging his family budget according to his desires, thereby robbing him of a sense of responsibility which in normal cases it is most desirable to retain.

MEDICAL RELIEF is all medical and surgical attendance and treatment, and all matters and things supplied by or on the recommendation of the Medical Officer whether in institutions or otherwise. Medical attendance on sick persons in their own homes is given by the District Medical Officer on receipt of an Order from the Relieving Officer. Some public assistance authorities have set up a panel system similar to that under the National Health Insurance scheme.

A Public Assistance Committee is not bound by a recommendation of the District Medical Officer with regard to the provision of medical relief.

The Committee has a discretion in the exercise of which regard must be had to both the medical and the financial need of the applicant and to the expense of the relief to the corporation.

Hallett, J. also expressed the opinion that an application for an order of *mandamus* was the only remedy for breach of statutory duty under the Poor Law Act, 1930, and that an action for damage would not lie. (*Cresswell v. Liverpool Corporation* (1939), 2 All E.R. 842.)

## SETTLEMENT

Settlement is the basis of claim for relief. It may be based upon birth, parentage, marriage, ownership, occupation of property, apprenticeship, or residence.

**POOR LAW (AMENDMENT) ACT, 1938.**

A Public Assistance Authority is authorized to grant a personal allowance not exceeding 2s. per week to any person aged 65 years or over who is receiving relief in a Poor Law Institution.

Under the provisions of the Widows', Orphans', and Old Age Contributory Pensions Act, 1936, Sect. 32 (2), in the case of any old age pensioner of unsound mind who is being maintained as a rate-aided person, additional comforts may be provided out of the patient's old age pension.

Any allowances made under the Act of 1938 fall to be borne out of the local rates. In Circular 1689 (9-6-1938) the Minister of Health requested that any payments made under the Act should be shown separately in the accounts of the Council.

The Act applies to England and Wales and, with certain adaptations, to Scotland.

**MODERNIZED RELIEF ORGANIZATION**

The London County Council, the Middlesex County Council and certain other large authorities have recently re-organized their relief administration. The schemes are not quite identical, but the following is a brief outline of the Middlesex Scheme. Powers have been obtained to abolish the Guardians Committees. Adjudicating Officers have been appointed to make determinations as to the amount of relief to be granted according to the approved scales from which they cannot depart. An appeal from their decisions lies to local Sub-committees. A Chief Co-ordinating Officer assesses the amount to be charged on patients or liable relatives. The same principles are adopted with regard to public assistance, education, public health, and mental services. Any differences are dealt with by a Co-ordination Committee.

**OFFICERS**

OFFICERS OF SENIOR GRADE are appointed subject to and cannot be dismissed without the approval of the Ministry of Health. They are officers with independent statutory duties acting in conjunction with, and not subject to, the poor law authorities, under the Minister of Health. (*Tozeland v. West Ham Guardians*, [1907] 1 K.B. 920.) Such officers include the Clerk and Treasurer of the Authority, Public Assistance Officer, the Master, Matron, and Chaplain of the workhouse or institution, Relieving Officers appointed to inquire into and report upon all applications for relief, Medical Superintendents, and officers of the Poor Law

infirmaries, together with such other officers as the Public Assistance Authority think necessary.

An officer dismissed by the Minister or with his consent may never know the cause and never have the opportunity of being heard in his own defence. (*R. v. Poor Law Commissioners*, 1850, 14 J.P. Jo. 36.)

Mr. Justice Porter held that the Council were acting within their powers in dismissing a transferred poor law officer in order to re-engage him at a reduced remuneration. The Guardians might have varied the remuneration and the Council were authorized to do the same. (*Mountford v. London County Council*, [1935] 2 K.B. 243; 153 L.T. 236.)

### FINANCE

The Expenses of the Public Assistance Authority are raised in a county as general expenses and in a county borough as part of the General Rate. The authority may, under certain conditions, recover relief either wholly or in part from recipients and certain relatives. (Act 1930, Sect. 20.) Relief may be given by way of loan in accordance with Sect. 49 of the Act of 1930.

ARREARS UNDER MAINTENANCE ORDERS. In the cases *London County Council v. Betts* and *London County Council v. Downes*, [1936] 1 K.B. 430; 154 L.T. 67, the decisions of a metropolitan magistrate that there was no power to enforce payment of maintenance arrears were reversed.

The justices' order had been issued in the first case under Section 33 of the Poor Law Amendment Act, 1868 (wife maintenance), which was repealed by the Poor Law Act, 1927, and in the second case under Sect. 43 (2) of the Poor Law Act, 1927, now Section 19 (2) of the Poor Law Act, 1930 (maintenance by relatives).

In the opinion of the magistrate, by reason of the omission in Sect. 19 of the Poor Law Act, 1930, of any express provision for enforcement of maintenance orders, he had no jurisdiction.

The Court held that there was no need for the Poor Law Acts to prescribe methods of recovery as this was already provided for in the Summary Jurisdiction Act, 1879.

Loans for works of a permanent character may be approved, and are repayable within a period of not exceeding 60 years.

The Accounts of the Public Assistance Authority are made up yearly to 31st March in accordance with the Local Government Act, 1933, Sect. 223, the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930, and the Public Assistance Accounts (County Councils) Regulations, 1930. The Accounts are subject to audit by the District Auditor of the Ministry of Health.

**Rights of Inspection.** Public Assistance Accounts of county and county borough councils are subject to the provisions of the Local Government Act, 1933.

### SUPPLEMENTARY PENSIONS

The Old Age and Widows Pension Act, 1940, transferred from the 3rd August, 1940, the responsibility for granting any additional assistance to old age pensioners and widow pensioners over 60 from public assistance authorities to the Assistance Board. The Act does not apply to blind persons' institutional treatment, medical surgical needs and cases of sudden and urgent necessity. About 250,000 persons were affected and the initial cost was estimated to be about £5,000,000 per annum, but £1,000,000 of this was secured by a reduction of the block grants paid to local authorities. The Determination of Needs Act, 1941, applies to these payments and the statutory disregards also apply. The Supplementary Pensions (Determination of Need and Assessment of Needs) (Amendment) Regulations, 1942, increased the original rates of maximum allowances from the 17th August, 1942. There were then about 1,125,000 recipients and the cost was increased by about £9,250,000. New Regulations, 1943, introduced in January, 1944, further increased the rates at an estimated additional cost of £7,250,000 a year, bringing the total annual cost to £51,250,000 paid to 1,475,000 pensioners. The new allowances additional to the pension are as below—

	<i>s.</i>	<i>d.</i>
Married couple . . . . .	25	— plus rent allowance
Pensioner living alone or as a householder . . . . .	10	— " " "
Single pensioner . . . . .	7	6 plus contribution to rent (not less than 2s. 6d., nor more than 7s. 6d.)
Dependant 21 or over . . . . .	15	—
between 16-21 . . . . .	12	6
" 11-16 . . . . .	9	—
" 8-11 . . . . .	7	6
under 8 . . . . .	6	—

Additions may be made in cases of sickness, age or infirmity, or where domestic help is required.

The normal practice of the Assistance Board is to continue payment of a supplementary pension after admission to hospital when the pensioner has commitments such as rent or the maintenance of dependants which cannot be met out of his basic pension or other income and in other cases to suspend payment. In the case of widows with supplementary pensions, the determination will in all cases remain formally in force for at least six months after her admission to hospital.



## SCOTLAND

There are no Boards of Guardians in Scotland, the administration of the Poor Law being in the hands of County Councils (see Chapter XXXI).

## NORTHERN IRELAND

Boards of Guardians administer the Poor Law and the Free Service of Medical Treatment, which is available for paupers and non-paupers alike.

## CHAPTER XXIV

### MENTAL TREATMENT

THE first Act of Parliament to deal with pauper lunatics was passed in 1743. It provided for locking up dangerous lunatics in some secure place. With consent of the justices they might be chained up. Pauper lunatics were accommodated in work-houses, houses of correction and dangerous cases in gaols. Further legislation followed in 1773, but it was not until 1808 that the county justices were first empowered to establish County Lunatic Asylums as separate institutions for mental cases. In the year 1808 an Act of Parliament was passed enabling Justices at Quarter Sessions to provide for the erection of asylums. In 1845 it became obligatory on the local authority to make the necessary provisions for all persons certified as of unsound mind and unable to pay for the necessary care. Numerous Select Committees were appointed from time to time, and the Report of the Committee appointed in 1877 to inquire into the Lunacy Laws formed the basis of the Lunacy Acts Amendment Act, 1889, which was re-enacted by the Lunacy Act, 1890, the basis of the existing legislation.

#### LUNACY ACT, 1890

The Lunacy Laws were consolidated in the Lunacy Act, 1890. By this Act the Local Lunacy Authority, viz. the County and County Borough Council (acting through its Visiting Committee) had to provide asylum accommodation for all persons of unsound mind in its area who were unable of themselves, or through their legally liable relatives, to provide for their full maintenance and care. Those who, as a consequence, became fully, or partly chargeable to public funds, were known as "pauper lunatics." The local lunacy authority was also granted power, if it chose, to provide other classes of institutions for "paid patients." Subsequent Acts were passed in 1891, 1908, 1911, and 1922.

#### PROPOSALS FOR REFORM

Subsequent to the passing of the Mental Deficiency Act, 1913, there was considerable agitation as to the administration of lunatic asylums. This came to a head as the result of a publication by Dr. Joseph Lewis in January, 1922.

A conference on lunacy administration was called by the Chairman of the Board of Control in January, 1922. The

conference passed unanimously resolutions in favour of (a) treatment without certification; (b) co-operation for research; (c) staffing arrangements; and (d) Advisory Committees for areas to be created in England and Wales. In August, 1922, a report was issued by the Committee on the Administration of Public Mental Hospitals. It was recommended that the superintendent should be a medical practitioner; that there should be visiting specialists; that patients should be provided with occupation; that after-care of patients should be provided; and that the nursing service and the dietary should be improved.

The Royal Commission on Lunacy Law and Administration and Mental Disorder was appointed in October, 1924. The Commission's terms of reference were—

1. To inquire, as regards England and Wales, into the existing law and administrative machinery in connection with the certification, detention, and care of persons who are, or are alleged to be, of unsound mind.

2. To consider, as regards England and Wales, the extent to which provision is, or should be, made for the treatment without certification of persons suffering from mental disorder, and to make recommendations.

The Commission issued its Report in July, 1926.

A formidable list of recommendations is classified under the headings of: (1) Certification and Treatment without Certification; (2) Detention; (3) Care; (4) Private Institutions; and (5) Local and Central Authorities.

Recommendations relating to Central and Local Authorities are as follows—

1. That the County Councils and County Borough Councils should be made responsible for providing accommodation and maintaining therein all persons who, through mental disability, require to be detained under care at the public expense.

2. That local authorities should have a duty to provide special accommodation for new cases.

3. That in view of the additional powers and duties proposed for local authorities, an Exchequer grant in aid should be provided for the Lunacy service; and that available under conditions which will ensure effective supervision by the Board of Control.

4. That at least two members of every Visiting Committee should be women, and that local authorities should be empowered to co-opt on Visiting Committees a limited number of persons who are not members of the local authority.

5. That the Master's office should be more regularly apprised of property in the hands of persons detained under care, and that suitable arrangements should be made for dealing with small estates.

6. That the Board of Control should consist of a lay chairman, a legal commissioner, a medical commissioner, and a woman commissioner who might be non-technical. It might, however, be found desirable to appoint two medical commissioners, one having experience of institutional administration, and the other possessing special scientific qualifications. The Board should remain a separate organization, subject to general control in matters of policy by the Minister of Health, who is answerable to Parliament.

7. That the Board of Control should supervise the new services for the treatment of incipient cases without certification.

With regard to the second of the terms of reference, the Commission recommend, *inter alia*, that—

The Lunacy code should be re-cast with a view to securing that the treatment of mental disorder should approximate as nearly to the treatment of physical ailments as is consistent with the special safeguards which are indispensable when the liberty of the subject is infringed; that certification should be the last resort and not a necessary preliminary to treatment; and that the procedure for certification should be simplified, made uniform for private and rate-aided cases, and dissociated from the Poor Law.

Certain recommendations under other headings relate to duties which the local authorities might be required to carry out. Thus, it is recommended that local authorities, in addition to the periodical visits prescribed, should visit at least once a month for the purpose of seeing new patients and their admission documents, and should be empowered, subject to approval of the Board of Control, to make provision for after-care of patients.

The Mental Treatment Act, 1930, continues further the legislation based on the Report of the Royal Commission on Lunacy Law and Administration and Mental Disorder, and is incorporated in the text of this chapter.

## PRESENT ADMINISTRATION

The Classes of persons who come within the Lunacy Acts, 1890 to 1922, and the Mental Treatment Act, 1930, include those who are of unsound mind or mentally infirm.

The Central Authorities include—

The Lord Chancellor, who is responsible for judicial functions.

The Minister of Health, who is responsible to Parliament for the work of the Board of Control.

The Commissioners in Lunacy, who are now merged in the Board of Control (see below).

A Master in Lunacy, who is assisted by an officer termed the Assistant Master in Lunacy, as provided by the Lunacy Act, 1922, and the Visitors in Lunacy.

**The Board of Control.** This was established by the Mental Deficiency Act, 1913, and reorganized by the Mental Treatment Act, 1930.

The Board of Control consists of the Chairman (who is a paid Commissioner), appointed by the Minister of Health, and not more than four other Senior Paid Commissioners, at least one being a woman. Of these, one must be a Legal Commissioner, appointed by the Lord Chancellor from amongst barristers or solicitors of five years' standing; and two are Medical Commissioners, appointed by the Minister of Health, who must be duly qualified medical practitioners of at least five years' standing.

The Board of Control is a Corporate Body, with perpetual succession and a common seal.

The duties of the Board of Control include supervision of the administration by the local authorities; certification and approval of premises; provision and maintenance of State institutions; and such other powers and duties of the Board as may be assigned, including the preparation of annual and other reports.

**Persons of Unsound Mind** formerly known as lunatics, are now detained in—

- (a) County and borough mental hospitals.
- (b) Registered hospitals receiving persons of unsound mind.
- (c) Houses licensed for the purpose.
- (d) State institutions, viz.—(i) Criminal mental hospitals.
- (ii) Royal Naval and Military hospitals. (iii) Institutions of the Board of Control.
- (e) Public Assistance institutions in which there are any persons of unsound mind, imbeciles, or idiots.
- (f) Houses scattered over the country providing for not more than one patient.

**The Local Authority** is (generally) the council of the county or county borough, who must provide accommodation for its rate-aided patients of unsound mind. The local authority is required to appoint the COMMITTEE FOR THE CARE OF THE MENTALLY DEFECTIVE for the purposes of the Mental Deficiency Act, 1913. This committee is to consist of members of the council, or other persons having special knowledge and experience with respect to the care, control, and treatment of defectives. The number of members of the committee is determined by the council, which must not be less than seven, except when such committee is not appointed under Sect. 7 (5) of the Mental Treatment Act, 1930, as the Visiting Committee under that Act. Some members must be women, and at least two-thirds must be members of the council.

**Visiting or Mental Hospitals Committee.** This committee is to

consist of not less than seven members (Act 1930), appointed by the local authority, or in the case of a joint mental hospital, by each local authority interested, and its members are known as visitors. The duties include the management of the mental hospital, the making of rules and regulations for its government, and the appointment and dismissal of officers, including (i) Chaplain, (ii) Medical Officer, (iii) Superintendent, (iv) Clerk, (v) Treasurer.

The powers of the local authority under the Act (except the power of raising a rate or borrowing money) may stand referred to the Committee.

Joint Committees or Joint Boards may be constituted with the approval of the Minister of Health. For example, the LANCASHIRE MENTAL HOSPITALS BOARD is the local authority for the area of the Board, and the provisions of the Lancashire County (Lunatic Asylums and other Powers) Act, 1891, as to expenses, borrowing, accounts, and audit apply accordingly.

**Duties of Local Authority.** The first duty of a local authority under the Mental Treatment Acts is to investigate the need of its area and to make necessary provision for the accommodation, either directly or, subject to the approval of the Board of Control, by contract, of temporary patients, who cannot express willingness or unwillingness to receive treatment, but may be treated for limited periods on the application of relatives supported by two medical recommendations and without the intervention of any judicial authority.

**Voluntary Patients.** Power is given by the Mental Treatment Act, 1930, for any person who is desirous of voluntarily submitting himself to treatment for mental illness to make a written application to the person in charge of an institution. Power is also given by the same Act to lodge relatives and friends of patients. Persons may also be received for temporary treatment without certification.

**Persons of Unsound Mind.** The previous powers and duties of the local authority under the Lunacy Acts for the reception and treatment of persons of unsound mind (whether rate-aided or self-supporting) who need to be dealt with by way of compulsory detention under Reception Orders, remain substantially unchanged by the Mental Treatment Act, 1930, except for a provision that a rate-aided patient may be sent to a mental hospital in the first instance by means of an Urgency Order, a provision hitherto reserved by the Lunacy Acts for private patients. Out-patient treatment may also be provided by local authorities. They have power also to provide for the after-care of any persons who have undergone treatment for mental disease.

## MENTAL DEFICIENCY

The classes of persons who are mentally defective and are defectives within the meaning of the Mental Deficiency Act, 1913, are those persons whom two medical men are prepared to certify as coming within the definitions laid down for idiots, imbeciles, feeble-minded persons, and moral imbeciles. The Act came into operation on 1st April, 1914.

**Mental Deficiency.** When a local authority has appointed one or more Visiting or Mental Hospital Committees, then, if the council of the authority so determines, either the Visiting or Mental Hospital Committee (with the addition of at least two women) may act as the COMMITTEE FOR THE CARE OF THE MENTALLY DEFECTIVE; or alternatively the Visiting or Mental Hospital Committee (without addition) may represent the council on the Committee for the Care of the Mentally Defective. The first duty of a local authority under the Mental Deficiency Acts is to ascertain which persons within their area are defectives, and subject to be dealt with under Sect. 2 (1) (b) of the Mental Deficiency Act, 1913; that is to say: (1) Defectives who are found neglected, abandoned, and without visible means of support or cruelly treated; (2) defectives found guilty of crime or found liable to be ordered to be sent to an industrial (now Approved) school; (3) habitual drunkards; (4) children notified by the education authorities as incapable of receiving benefit in a special school or without detriment to other children.

The local authority cannot touch the following cases unless they are requested to do so in the manner provided by Sects. 9, 16, and 30 (ii) of the 1913 Act, viz.: (1) persons already in prison or undergoing detention in a place of detention, or in a reformatory or industrial (now Approved) school or a mental hospital; and (2) pauper mothers of illegitimate children.

IT IS THE DUTY OF THE LOCAL AUTHORITY to provide suitable supervision for defectives. Without the consent of the Board of Control no person may undertake the care of more than one defective elsewhere than in an institution, a certified house, or an approved home; and where a person undertakes the care of any defective, he must give notice thereof to the local authority and to the Board. This means that all defectives, except those who are maintained in their own families—which is permitted so long as they are maintained properly—come within the cognizance of the Board of Control and the local authority, and if necessity arises one or both of these bodies will have to take action. Where a defective is under the guardianship of another person in a private dwelling, the local authority may pay for his support. Anyone who has a friend in a mental hospital can

obtain his release on condition that he assumes responsibility for the patient.

Where supervision affords insufficient protection, it is the duty of the local authority to send such persons to institutions, or make provision for their guardianship, and to provide suitable and sufficient accommodation for such persons when sent to such institutions. For this purpose they instruct their officer to bring a petition before a justice of the peace with a statement of particulars stating under which of the above classes the defective is subject to be dealt with, and accompanied by the two medical certificates. If the magistrate approves, he signs an order sending the defective to an institution, the name of which is specified in the order. The order lasts for one year, and is then renewed for another year; after that it is renewed every five years.

**Institutions.** Local authorities may provide and manage institutions of their own. They may combine with other local authorities. In certain cases they may, by agreement, send a defective to a State institution and pay for his support or accommodation whilst there. The local authority responsible shall be the one in which the defective resided and such a person shall be deemed to have resided in the place where the offence was committed unless it is proved that he resided in some other place. (Sect. 44 (1).) *London County Council v. Cambridgeshire County Council*, [1936] 2 K.B. 298. The Mental Deficiency Act, 1913, provides that any council may maintain in an institution, or under guardianship, any defectives other than those for whom it is compelled to provide. (Sect. 30 (e).) This is subject to the restriction by Sect. 33, prohibiting a local authority from levying more than a halfpenny rate, plus 33½ per cent, under the Local Government Act, 1929, for its optional expenditure. The Act gives the Public Assistance Authority power to report to the Ministry of Health persons who are in receipt of relief and who, in the opinion of the Board, are defectives subject to be dealt with under the Mental Deficiency Act as described above. (Sect. 30 (ii).) In cases where a Public Assistance Authority or a combination of authorities have provided an institution for defectives with the approval of the Board of Control, under Sect. 37, the local authority may send a defective to such an institution and pay for the cost of his detention. Children and young persons are usually provided for in special schools as explained in Chapter XXII.

Other duties of the local authority are, if they think fit, to maintain or contribute towards the maintenance of such persons in an institution or approved home; in case of death to provide,



if they think fit, for the burial of persons who die in such institution or home. The local authority may appoint or employ sufficient officers or other persons to assist in the performance of the duties under the Act. The local authority are required to make to the Board of Control annual or such other reports as may be required.

THE MENTAL DEFICIENCY (AMENDMENT) ACT, 1925, amends Sect. 7 of the Mental Deficiency Act, 1913, for the purpose of enabling a defective to be removed from an institution for the purpose of being placed under guardianship. It enacts by a new sub-sec. (2) of that section—

2. (a) Where an order has been made that a defective be sent to an institution, the judicial authority which made the Order or any other judicial authority, or, where the original Order was not made by a judicial authority, any judicial authority may, on application being made for the purpose by the Board or by the local authority, and on being satisfied that the case is or has become one suitable for guardianship, order that the defective be placed under guardianship.

The Mental Deficiency Act, 1927, provides for the amendment and alteration of the definition of "defectives" in the Act of 1913, under which only persons mentally defective from birth or early age come within its scope. There was thus no power to deal with cases where the defectiveness arose at a later stage, which might particularly need the sort of care and treatment which can be provided in a mental deficiency colony. The Act brings within its scope of treatment all cases of "mental deficiency," whether innate or induced after birth by disease, injury, or other causes. Others who will come in are those not under proper care and control; while the power of local authorities to provide suitable training for mental defectives is made explicit.

Mental Deficiency Act, 1938. This Act was passed to amend the principal Act of 1913 in order to deal with the situation created by the decision of the Court of Appeal in the Board of Control case relating to a mental defective. The Board were detaining the defective under an expired order on the ground that the wording of Sect. 11 (3) of the Act of 1913 was wide enough to allow them a reasonable time to make a new order provided the Special Reports and Certificates prescribed by the section had been made and considered by the Board before the expiry of the order. Although the Divisional Court found in favour of the Board, their decision was reversed by the Court of Appeal.

As this decision created certain administrative difficulties in connection with expiring orders, this Act provides for a margin of one month between the expiry of a Detention Order and the making of a Continuation Order.

The Act also makes valid Continuation Orders made in good faith after the expiry of a Detention Order made prior to the passing of the Act.

**Finance.** The former grants made to local authorities for mental deficiency have been discontinued by the Local Government Act, 1929, and amalgamated, together with the grants to voluntary agencies, in the new Block Grant. Voluntary Agencies were financially aided by the Ministry of Health prior to the operation of the Local Government Act, 1929. Grants are now paid to such agencies by the local authorities according to a scheme made by the Minister.

The Expenses of local authorities are defrayed under the principal Act, or the 1930 Act, as under—

(a) in the case of a County Council not comprising the area of any other local authority, as expenses for general county purposes;

(b) in the case of other County Councils, as expenses for special county purposes;

(c) in the case of any other local authority, out of the General Rate Fund.

**Loans.** Money may be borrowed for a period not exceeding 60 years, subject to the consent of the Minister of Health.

**Accounts.** Separate accounts must be kept by the local authorities, made up to the 31st March, and are subject to audit by the District Auditor of the Ministry of Health, except in the case of boroughs, when the accounts are audited in the same manner as the borough accounts.

**Annual Returns** have to be made to the Board of Control which necessitates the division of the accounts into—(1) Mental Hospital Maintenance Account. (2) Building and Repairs Fund Account. (3) Farming and Gardening Account.

Arrangements may be made with another authority or a joint mental hospital may be maintained. The local authority may provide accommodation for persons of unsound mind of the private class.

## STERILIZATION OF THE UNFIT

In June, 1932, the Minister of Health appointed a Departmental Committee under the chairmanship of Mr. Lawrence G. Brock to inquire into the sterilization of mental defectives. The Committee issued their Report in 1934. They reject the case for compulsory sterilization, but recommend that voluntary sterilization should be legalized in respect of persons who fall under one of the following categories: (a) mental defectives or persons who have suffered from mental disorder; (b) persons

likely to transmit either of these incapacities; (c) persons suffering from a grave physical disability, such as certain forms of blindness and deaf-mutism.

### CONCLUSION

The subject of the Feeble-Minded is treated more fully in *Public Assistance and Unemployment Assistance* (Pitman).

## CHAPTER XXV

### UNEMPLOYMENT

**Definition.** Unemployment may be defined as "the condition arising out of the inability of willing able-bodied workers to find employment at subsistence wages." The unemployment situation has not arisen suddenly, nor is it peculiar to this country. In 1907-8 unemployment in some of the heavy industries reached figures comparable with those with which we have been made familiar in recent years and was experienced in most trades. After the War (1914-18) there was a trade "boom," but in 1921 there succeeded an intense industrial depression affecting all industries at first and continuing, with fluctuations, in several important industries.

In one month only since 1921, viz. April, 1926, did the number of unemployed persons fall below a million until the outbreak of war in September, 1939.

**Causes of Unemployment** fall into three main groups—

- (i) Those which spring from the organization of industry.
- (ii) Failures in industrial relations.
- (iii) Personal causes of unemployment.

These causes, so complex and diffused, cannot be dealt with here at any length. For further explanation of the theories of the causes the reader is referred to *Social Administration*, (Pitman).

It is extremely difficult to present an impartial picture of the causes of unemployment, but an interesting report was issued as a Blue Book in May, 1909, in connection with the Royal Commission on the Poor Laws and Relief of Distress. The document embraces the results of inquiry made by the late (then Mr.) Sir A. D. Steel Maitland and Miss Rose Squire (His Majesty's Inspector of Factories) on the relation of industrial and sanitary conditions to pauperism, together with a memorandum on certain other points connected with the poor law system and its administration. The instructions defining the inquiry comprised ascertaining to what extent the prevalence of certain industrial and sanitary conditions contributed to pauperism. The investigators commenced the inquiry in London, and then proceeded with their labours in other typical centres, such as Liverpool, Manchester, Birmingham, Sheffield, the Potteries, Bristol, etc., interviewing officials and poor persons.

The report says: The deductions which we think may be fairly drawn from the facts which we have reported are that the

conditions which we were called upon to investigate contribute to pauperism in London in the following order of degree—

1. Casual and irregular employment. This, we believe, is the chief cause of pauperism.

2. Bad housing conditions. These, in our opinion, contribute to pauperism through disease and demoralization. They are most important causes of pauperism, though less so than the first.

3. Seasonal fluctuations in trade. Such fluctuations cause pauperism to the extent to which the seasonality partakes of a casual character.

4. (a) Insanitary and unhealthy conditions of workplaces.

(b) Excessive hours of work.

(c) Earnings habitually below what are required for healthy subsistence.

These are important causes of poverty and suffering, but do not actively create paupers to any very marked extent.

5. Dangerous trades. The aggregate effect of these is limited by the small number of persons employed in them in London, but of these they reduce an undue proportion to potential pauperism through preventable disease.

The conclusions arrived at with regard to provincial centres are in somewhat similar terms, with the addition that the inspectors had been unable to trace any connection between long hours of work and pauperism.

One popular fallacy may be mentioned, namely, that personal incapacity or moral delinquency is a normal cause of unemployment. It should be recognized that whilst willing able-bodied workers are unemployed, the personal factor cannot be a cause of unemployment, although it may be the reason why certain persons are unemployed. It is also necessary to distinguish between the unemployed and the unemployable. The latter require attention to their peculiar forms of invalidity. The former require work or maintenance.

## METHODS OF PUBLIC ACTION

It is also very important to recognize the difference between temporary depressions and permanent conditions causing unemployment. Whereas relief works may be an effective form of treatment for the former, it never can be for the latter.

During the feudal period there was no unemployment problem. Landless or lordless men, who could not maintain themselves otherwise, were required to find a kinsman with whom to be domiciled and kept, or else the folk-moot assigned them to a lord. In return for labour they received maintenance, protection,

and a share of common pasture and waste. Carlyle, in *Past and Present*, represents Gurth, born thrall of Cedric the Saxon, greatly pitied by Dryasdust and others, as happier than many a Lancashire and Buckinghamshire man of his days.

The apparent unemployment which followed the break up of the manorial system cannot be regarded as real unemployment, but rather as a reaction against prior conditions. The Vagrancy Laws and Statutes of Labourers were directed against the refusal to work under former conditions, and not to deal with lack of employment. The legislation making the giving of alms to the able-bodied punishable by imprisonment is proof of this fact. It is evident, however, that the problem of unemployment had its genesis in the transition from agricultural to industrial conditions.

### THE POOR LAWS AND UNEMPLOYMENT

It is important to observe that the earliest laws for the relief of the poor made a clear-cut distinction between the impotent and able-bodied, and provided a different form of treatment for each. The impotent had to be relieved, but the able-bodied had to be set to work upon stocks of material provided by the parochial authority for that purpose. The first workhouse was a factory for the destitute unemployed—hence its name. The test of destitution was the offer of the workhouse. From this developed the labour test, i.e. the performance of a task by the able-bodied as a necessary condition of relief. The abolition of this test, towards the end of the eighteenth century, was responsible for the worst period of demoralization which this country has known. Relief by allowance in aid of wages and the fixation of wages upon the bases of the price of wheat and the size of families, ousted the independent labourer, who joined the army of parish roundsmen in his turn, and encouraged improvident marriages and large families by the poorest people. The Royal Commission on the Poor Laws, 1832, solved this problem, to a large extent, by the re-introduction of the workhouse test, the setting up of separate vagrant wards with a prescribed task to be performed before breakfast, and the introduction of the principal of less eligibility, i.e. that the condition of the poorest paid independent worker should be something better than the able-bodied unemployed person receiving assistance from the rates.

The conditions which subsequently produced an ever-growing body of unemployed able-bodied workers made the Outdoor Relief Prohibitory Order of 1844 unworkable in practice. The workhouse was not sufficiently commodious to house the destitute unemployed, and during periods of acute industrial

depression or trade disputes, even the labour test becomes impracticable. In 1852 an Outdoor Relief Regulation Order provided for a "labour test," upon the performance of which outdoor relief might be granted, one-half being in kind. The provision that one-half at least of such relief must be in kind was rescinded in 1932. The Relief Regulation Order, 1911, consolidated previous orders and provided, *inter alia*, the conditions under which out-relief to the able-bodied should be given.

### NON-INSTITUTIONAL POOR RELIEF TO THE ABLE-BODIED

The granting of relief to the able-bodied unemployed, other than institutional, is now governed by the Relief Regulation Order, 1930.

No able-bodied man shall receive such relief in respect of any period during which he is employed and in respect of which he receives remuneration.

Relief must be made for a period not exceeding six weeks. (Poor Law Order, 1930, par. 11 (2).)

Arrangements must be made, as far as practicable, to set to work men capable of working and for their attendance at places of instruction and training, where they may receive training and instruction in work suitable to their age, physical capacity, and intelligence.

The Parliamentary Secretary to the Minister of Health stated in the House of Commons on the 4th April, 1935, that the main object of the requirement that able-bodied men should be set to work, trained or instructed, was to maintain employability of applicants for relief by at the least providing them with some regular occupation during what must otherwise be a period of enforced idleness.

Departure from the above regulations may be made under the following conditions, viz.—

(a) A relief committee may consider the special circumstances of a case more fitting for other forms of relief and report the departure and grounds therefor to the council or Public Assistance Committee within three days.

(b) In like circumstances, the council or committee may do the same and report to the Minister within seven days.

(c) If the council or committee disapprove of the departure by their committee they shall report the same to them and such relief shall cease.

(d) Such departures must be reported to the Minister by the clerk within 21 days, and if the Minister does not disapprove, the relief shall not be subject to disallowance.

## RELIEF ON LOAN

All relief, given in accordance with the Regulations, may be granted by way of loan.

Considerable administrative difficulties have followed the practice of granting relief on loan to the unemployed through the accumulation of debts which the debtors can never be likely to repay. The cancellation of this relief cannot be done by general resolution, but each case must be dealt with on its merits (*vide* Tynemouth case, 1930). Other methods in relief of unemployment open to the poor law authorities include the payment of travelling facilities and the cost of emigration.

## METHODS OUTSIDE THE POOR LAWS

For many years, towards the close of the nineteenth century, the belief had been growing that, as considerable unemployment was due to causes beyond the control of the sufferers, some sort of discrimination should be applied between relief to the genuinely unemployed and others. During periods of acute depression, many voluntary relief agencies were established to aid sufferers. The most notable of these was the Mansion House Fund started in 1887. Municipal authorities expedited works they needed in order to provide relief.

## LABOUR REGISTRIES

During the wave of depression between 1889 and 1892, several London vestries established labour bureaux to register unemployed workmen in order to be able to bring workers and employers into touch with one another, when required.

The London Government Act, 1899, transferred the functions of the London vestries to the Metropolitan Borough Councils. Unlike the vestries, the accounts of the boroughs were subject to district audit and the legality of the expenditure was raised and all the bureaux but that at Battersea were closed. The Labour Bureaux (London) Act, 1902, authorized their establishment, and four other boroughs opened bureaux. In 1903 Manchester obtained powers for the same purpose and proved much more successful in placing workmen than the London boroughs.

## THE UNEMPLOYED WORKMEN ACT, 1905

This Act provided for the establishment, by order of the Local Government Board, of Distress Committees in every Metropolitan borough and in provincial boroughs and urban districts with a population of not less than 50,000, and also for



a central body for the county of London. The central body was to superintend and co-ordinate the work of the London Distress Committees to aid the emigration of an unemployed worker and his dependants, and provide temporary work for the unemployed. The Local Government Board also had the power to instruct the central body to establish farm colonies. The distress committees were to register applicants, inquire into their cases and endeavour to obtain employment for them. The rate contribution to these purposes was limited to  $\frac{1}{2}$ d. in the £, or, with the Board's consent, 1d. in the £, but the rate aid could be devoted only to establishment charges, emigration and removal expenses, and, with the Board's consent, the acquisition of land. The actual provision of work was limited to voluntary contributions and Treasury grants.

The economic effects of the Act were widely criticized. Publicly provided work was more easily found than normal employment, and search for the latter was hindered. The public work most suitable for relief purposes was non-revenue producing and such as to be extravagantly executed. The Act was good in principle—to meet temporary distress—but unemployment had unfortunately become a normal incident of our industrial life even when trade is comparatively good. The Act was, therefore, denounced by the Royal Commission on the Poor Laws set up in 1905, and ultimately repealed by the Local Government Act, 1929.

## EMPLOYMENT EXCHANGES

In 1904 the Board of Trade issued a Report on Agencies and Methods for Dealing with Unemployment in Foreign Countries, which showed that many Continental countries had schemes already in operation.

The Royal Commission on the Poor Laws, 1905-9, also unanimously recommended the establishment of Labour Exchanges under national control, together with State Insurance against unemployment. The Minority Report advocated a scheme on the Ghent System, under which the trade unions would be subsidized to undertake the work. The Labour Exchanges Act, 1909, set up a system which was a compromise between the general scheme of the Majority and the Minority proposals.

**Objects of Employment Exchanges.** One of the main objects of the Act was the provision of a voluntary market for labour which had in many trades remained unprovided for. The provision of such market resulted in the prevention of economic waste of time on the part of both employers and workpeople, for the former were enabled always to know where to obtain available labour, while the workpeople in search of employment

were always able to know where to obtain it. This has resulted in a reduction of casual labour and vagrancy.

The creation of these exchanges made the provision of statistics relative to the conditions of labour a standing feature of their work, whereby they are enabled to afford accurate information of the position of affairs in industry. They have also made possible the provision of machinery for insurance against unemployment.

The guiding principles of such a system are their national character, as they cover the whole of the United Kingdom, and are administered by the Central Government: they are industrial and not charitable, free and voluntary to both employers and workpeople, and impartial as between employers and workpeople.

**Definition.** According to the definition in the Act, a "Labour Exchange" means any office or place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople, and workpeople who seek engagement or employment.

In October, 1916, it was announced by the Government that in future the Labour Exchanges would be termed "Employment Exchanges," a title which corresponds more accurately to their normal functions.

**Administration.** The Employment Exchanges are now administered by the Ministry of Labour, which may establish and maintain exchanges in such places as it thinks fit, or assist exchanges maintained by other authorities and persons. It may also co-operate with other authorities and persons, and may take over employment exchanges by agreement with the authority or person by whom any such employment exchange is maintained. By such other means as it thinks fit, it may collect and furnish information as to employers requiring workpeople and workpeople seeking engagement or employment.

In London, special Employment Exchanges have been set up for certain trades, e.g. catering and building.

An important feature of the work connected with the employment exchanges has been the establishment of Local Employment Committees consisting of equal number of representatives of employers and trade unionists, nominated as a rule by associations in the various localities. Added to these is a small number of additional members, not exceeding one-third of the total membership, who are nominated by the Minister. These Committees have established Juvenile Employment Committees, which are setting up After-care Committees in various areas for dealing with the problem of juvenile employment.

Regulations are made by the Ministry of Labour for the management of employment exchanges, for authorizing advances (on loan) to workpeople travelling to places where employment has been found through the exchange, and for providing that no one shall be disqualified or prejudiced for refusing to accept employment found through an employment exchange where the ground of refusal is either that a dispute which affects his trade exists, or that the wages offered are lower than those current in the trade in the district where the employment is found. The regulations must be laid before Parliament for 40 days.

(The Choice of Employment Act is referred to in Chapter XXI.)

**Penalties.** Any person knowingly making a false statement or false representation to an officer of the employment exchange, for the purpose of obtaining employment or procuring workpeople, is liable in respect of each offence, on summary conviction, to a fine not exceeding £10.

The employment exchanges are responsible for the administration of the Unemployment Insurance Acts, as described below.

**Officers.** Officers and servants are appointed by the Ministry of Labour subject to approval of the Treasury.

**Finance.** Expenses incurred by the Ministry of Labour are defrayed out of money provided by Parliament.

## THE UNEMPLOYMENT INSURANCE ACTS

A compulsory system of insurance against unemployment was amongst the recommendations of the Majority and Minority Commissioners, who reported in 1909 upon the Poor Laws and the Relief of Distress. The subject constituted Part II of the National Insurance Act, 1911. It applied originally to a limited number of industries, but the conditions of benefit and other regulations were amended from time to time. The scope of the Acts was extended and the previous legislation was consolidated by the Unemployment Insurance Act, 1920. It has been amended repeatedly to meet industrial crises.

**Central Administration.** The Acts are administered by the Ministry of Labour through the employment exchanges.

**Insured Persons.** Under the Unemployment Insurance Act, 1920, insured persons, as from 8th November, 1920, are all persons for whom health insurance contributions have to be paid, except outworkers or persons employed in agriculture (including horticulture and forestry) or in private domestic service. As distinct from health insurance, with certain exceptions, workpeople over 70 (other than old age pensioners) are insurable. A new and distinct scheme was set up for agriculture in 1936.

**Excepted Employments.** These are employments under a local

or other public authority in a police force, in the service of a railway company, and certain other public utility undertakings, persons with rights under a statutory superannuation scheme, including teachers, if the Minister of Labour certifies that they are not subject to dismissal except for misconduct, or for neglect of or unfitness to perform their duties, and are employed under terms and conditions which make insurance unnecessary. Contributions must be paid in respect of 20 per cent of employees and full contributions in respect of each employee for the first three years after entrance into service. Persons over 70 who are old age pensioners are excluded as regards both contributions and benefits.

**Exempt Persons.** Exempt persons are those who are engaged in insurable employment, and, if they so desire, are entitled to exemption, viz.—

1. Persons with pensions or independent income of at least £26 per annum.
2. Persons ordinarily or mainly dependent for livelihood on some other person; or
3. Persons whose earnings are derived from an occupation which is not insurable.

The difference between exemption and exception should be noticed. In the latter category a certificate from the Minister is necessary and the conditions of employment must be such as to provide benefits equivalent to those enjoyed by insured persons. In the former category the employer must pay his share of the contributions.

**Decisions on Claims.** In the first instance, the decision on a direct claim to benefit is given by an Insurance Officer appointed by the Minister of Labour. An insured contributor whose claim to benefit has been disallowed can appeal within 21 days to a Court of Referees.

The constitution and functions of the Courts of Referees under the Unemployment Insurance Act are as follows: Their duty is to settle disputes which may arise under the Unemployment Insurance Act, 1935, between workmen claiming benefits and the insurance officer of the Ministry of Labour. In accordance with Sect. 13 of the Unemployment Insurance Act, all claims for unemployment benefit are to be determined in the first instance by an Insurance Officer appointed by the Ministry of Labour. If, however, the officer refuses or stops benefit, or allows benefit of an amount not in accordance with the claim, the workman may require the case to be referred to a Court of Referees consisting of three persons. One of these referees is to be drawn by rota from a panel of employers' representatives, and one drawn by rota from a panel of workmen's representatives, and there is to

be an impartial chairman—neither an employer nor a workman in an insured trade—chosen by the Ministry of Labour.

If the Court of Referees make a recommendation in agreement with the decision of the Insurance Officer, their recommendation is final. But if they disagree with the officer, the latter must either accept the recommendation of the Court, or, if desired by them, must refer the matter to the umpire appointed by the Crown under the Act. The decision of the umpire will be final. Every one of the districts into which the United Kingdom is divided has its own Court of Referees, who sit at such intervals as may be necessary and convenient.

**Arrangements with Associations and Societies.** The Minister of Labour may make arrangements with certain associations, e.g. trade unions, to repay, periodically, to the association the equivalent of such sum which the workmen would have received from the Unemployment Fund, where such benefit is paid to workmen by the association. The Minister of Labour may refund, under special provisions, to any association of persons which provides for payments of persons whilst unemployed, whether working in an insured trade or not, not exceeding one-sixth of the aggregate amount expended during any prescribed period.

**Special Schemes for Industries.** Industries which are willing and able to do so could, with the approval of the Minister of Labour, contract out of the general scheme of insurance by setting up special schemes of their own, giving equal or superior advantages. If desired, two or more industries may combine to set up a special scheme. Special schemes are to be administered by a Joint Board of Managers representing employers and employed on behalf of the industry or industries concerned. The form and amount of the contributions and benefits must be determined in the scheme itself, and need not be the same as those laid down in the general scheme.

Supplementary schemes may be set up by an industry, even whilst it remains under the general scheme, in order to provide additional benefits, including provision for short time, or for unemployment not covered by the general scheme, e.g. the three waiting days, or a higher rate of benefit.

**Blanesburgh Committee Recommendations.** A Committee of Inquiry was appointed in November, 1925, to consider, in the light of experience gained in the working of the unemployment insurance scheme, what changes in the scheme, if any, ought to be made. Their report was issued early in 1927, and contained the following recommendations, viz.—

(a) The Unemployment Fund should be contributed in equal proportions by employers, employees, and the State.

- (b) The benefits and contributions should be amended.
- (c) A special levy of rd. should be made to make good the large deficit on the fund.
- (d) That there should be no surrender value to women upon marriage.
- (e) That the provisions should not be extended to include domestic or agricultural workers.

An Amending Act, based upon the Blanesburgh proposals, was passed in 1927.

**Finance.** The Unemployment Fund is established under the control and management of the Government, out of which fund all payments under the Act are made. The fund, having become insolvent owing to a long period of exceptional unemployment, has had to be supplemented by moneys raised by borrowing. The Unemployment Insurance Act, 1930, authorized the Treasury to make advances up to £60,000,000 at a time when the debt was £44,680,000. This amount soon proved inadequate and before the end of the year the maximum was increased to £70,000,000.

### Royal Commission on Unemployment Insurance

A Royal Commission on Unemployment Insurance was appointed late in 1930, under the chairmanship of His Honour Judge Holman Gregory. The Chancellor of the Exchequer stated the terms of reference in the House on 1st December, 1930, viz.—

“To inquire into the provisions and working of the Unemployment Insurance Scheme, and to make recommendations with regard to:

(1) Its future scope, the provisions which it should contain and the means by which it may be made solvent and self-supporting; and

(2) the arrangements which should be made outside the scheme for the unemployed who are capable of and available for work.”

This Committee issued an Interim Report in June, 1931, in which they dealt with the following questions: (1) the increasing indebtedness of the Unemployment Scheme, (2) the increasing cost of Transitional Benefit to the Exchequer, and (3) the suggestion that benefit is paid in circumstances which the scheme was not intended to cover. Subsequently, the period of benefit was limited to 26 weeks, subject thereafter to Transitional Payments under a Needs Test assessed by the Public Assistance Authority. The Unemployment Insurance (Anomalies) Act, 1931, provided for Regulations to be issued respecting (a) Intermittent Workers;

(b) Casual and Short-time Workers; (c) Married Women; and  
(d) Seasonal Workers.

The Final Report was issued in December, 1932, and the Unemployment Act, 1934, was passed based to a large extent on its recommendations.

### Report of the Committee on National Expenditure

The Report of this Committee under the Chairmanship of Sir George E. May, Bt., K.B.E., was issued in July, 1931. The Labour Government being unable to come to an agreement as to the measure of economy necessary, fell, and was replaced by a National Government, which passed the National Economy Act, 1931, for the purpose of enabling certain economies to be effected on the lines of the Interim Report of the Royal Commission on Unemployment by means of the Unemployment Insurance (No. 3) Act, 1931, Orders in Council, and Anomalies Regulations, 1931.

### THE UNEMPLOYMENT ACT, 1934

**Introduction.** This Act is considered to be one of the most comprehensive and constructive social measures passed for many generations. The main structure of the Act represented the development of the policy of past years.

When the principle of state insurance was adopted for the first time in 1911, it was not dreamed that the country would have to pass through such a period of marked distress such as it has encountered since 1919. It will not be denied that, however beneficial the scheme may have been upon its inauguration, its value during the recent period of depression has been inestimable. Countries who were cynical and critical at its birth have subsequently hurried to adopt a similar plan.

The Royal Commission on Unemployment Insurance in the Final Report of 1932 recommended, *inter alia*, a scheme of unemployment assistance which in essence was a system for stabilizing the State liability for transitional payments and the equalization of poor law charges under which the more prosperous areas would have shared the burden of the depressed areas.

The scheme proved unacceptable to the former, notwithstanding an offer by the State to give financial assistance, and the proposals were allowed to lapse.

On 12th April, 1933, the Minister of Health in the House of Commons said, "the central government shall accept responsibility, both administrative and financial, for assisting all the able-bodied unemployed who need assistance."

The Act had three parts. Part I was designed to establish a solvent and self-supporting comprehensive scheme of insurance against unemployment. Part II faced the necessity of bringing order into a situation of assistance to persons not entitled to insurance benefit which had become very confused, especially since 1929. Part III contained transitory provisions relating in the main to the period between the coming into operation of Part I and the full operation of Part II.

The Salient Features of the Act may be summarized as follows—

1. To extend and improve the benefits of State Insurance.
2. To establish the insurance scheme on a solvent and self-supporting basis, free from the danger of bankruptcy or continual borrowings.
3. To secure opportunities for instruction and training for unemployed persons with a view to preserving their employability.
4. To relieve local authorities by transferring to the State the responsibility for the industrial able-bodied unemployed.
5. To remove the granting of assistance from political influences.

Part I has been consolidated in the Unemployment Insurance Act, 1935; and Part II may be referred to as the Unemployment Assistance Act, 1934.

The principal provisions are as follows, but further details are contained in the relative chapters of *Social Administration* (Pitman).

**Age of Entry into Insurance, and Rate of Contributions in Respect of Persons Under the Age of 16.**

The age for entry into insurance is lowered from 16 years to 14 or to whatever is fixed as the school-leaving age. In the case of a juvenile above the school-leaving age and under 16 employed in an insurable trade, a weekly unemployment insurance contribution of 2d. each is payable by the juvenile, the employer, and the Exchequer. Juveniles under 16 who continue in whole-time education beyond the school-leaving age voluntarily receive a free credit of contributions up to a maximum of 20s.

**Unemployment Benefit** is payable at the age of 16. Juveniles may be compelled to attend instruction centres just as they previously had to attend school.

**Dependants' Benefit.** In respect of juveniles between 14 and 16 years, the benefit is payable to parents entitled thereto, whenever the dependant is unemployed for reasons beyond his control.

Employers may be required to notify the discharge of boys and girls under the age of 18 years from their employment.



**EXCEPTED EMPLOYMENT**

(Power to enlarge or restrict excepted unemployment.)

In order to avoid anomalies in the operation of the Unemployment Insurance Acts, the Minister may, by Regulations, made with the consent of the Treasury, either unconditionally or subject to such conditions as may be specified in the regulations either—

(a) provide for including the class of persons employed in insurable employment amongst the class of persons in excepted employment, or

(b) provide for including the class of persons in excepted employment.

**BENEFITS**

Owing to the fall in unemployment, the Insurance Fund had a surplus. Of the possible alternatives for dealing with this existing surplus, the Act extended the period of benefit. This is for two reasons. Firstly, working people to-day need as much economic security as is possible in their lives. Secondly, the method of giving additional benefit represents a sound insurance principle.

**Right to Duration of Benefit.** The previous provision is retained under which claimants are entitled to 26 weeks' benefit in the twelve months following the date of their claims (which is called their benefit year) provided they paid 30 contributions in the last two years and are otherwise qualified for benefit.

They are now entitled to additional days of benefit in accordance with the following rule: "Persons who have been insured for five years will be allowed additional days of benefit at the rate of six extra days of benefit for every ten contributions paid in the preceding five years, subject to a deduction of one day of benefit for every five days received in, broadly speaking, five years."

To put it simply, if an insured contributor during the previous five years has paid the full number of contributions, viz. 260, and has received no benefit during those years, he will be entitled to draw benefit for additional 26 weeks over and above the original allowance of 26 weeks. In other words, he will be entitled to draw benefit for a full year. If, during the previous five years, he has drawn benefit, say, for 50 days, then the additional period of 26 weeks would in this case be reduced by 10 days.

It is estimated that this provision for additional benefit will add £8,350,000 to the amount of benefit paid in a year, when the average number of unemployed is 2,500,000. This alteration of additional days will result in the transfer of a substantial number of persons from transitional payments to insurance benefit.

**Rates of Benefit.** In accordance with proposals made by the Chancellor of the Exchequer when opening his Budget in April, 1934, the Minister restored, as from 1st July, 1934, the 10 per cent cuts made in November, 1931, in the rates of benefit. They were further extended from the 2nd November, 1944.

## INSTRUCTION AND TRAINING

In any area where the number of unemployed juveniles under 18 is considerable, the Local Education Authority are under obligation to provide a Junior Instruction Centre with the assistance of a Grant. Attendance at these courses is compulsory for all unemployed juveniles over the school-leaving age and under 18 (whether an insured contributor or not) unless there is some good grounds for excusing attendance.

Schemes for this purpose must be submitted to the Minister, who obtains the consent of the Treasury, after consultation with the Ministry of Education. In areas where the number of unemployed juveniles does not justify the opening of centres, arrangements may be made, so far as is practicable, for the attendance of unemployed juveniles at some form of institution class.

Apart from courses for juveniles, the Minister may continue and extend the existing system of training centres for persons over 18 years capable of, and available for work, but having no work or only part-time or intermittent work. Attendance at such centres may be made a condition for the receipt of benefit or assistance.

The Minister, subject to the approval of the Treasury, may—

1. Defray the cost of authorized courses provided by him, etc.
2. Contribute towards the cost of any other authorized courses.
3. Defray or contribute towards the cost of—

(a) training courses; or

(b) courses of instruction, or

(c) courses of occupation provided in pursuance of arrangements made with the Minister by—

(i) any public authority, or

(ii) other body

for persons who are capable of and available for work, but have no work or only part-time or intermittent work.

Previously, if an unemployed contributor was in receipt of dependants' benefit he would draw it only in respect of his children up to the age of 14 years unless they were continuing full-time education in a day school, in which case dependants' benefit could be drawn up to the age of 16. He is now able to draw it in respect of his children up to 16 if they are unemployed, or are voluntarily continuing full-time education.

A grant not exceeding 75 per cent of the cost in respect of the attendance at such courses of persons in receipt of benefit may be made out of the Unemployment Fund.

The Education Act, 1944, provides for the setting up of County Colleges at a date not later than the 1st April, 1948, when the function of instruction and training will be dealt with under the provisions of that Act.

## FINANCIAL

Establishment of the Unemployment Insurance Statutory Committee, and the Duties of the Committee as Regards the Insurance Fund. The proposals in this connection have been framed with due regard to the importance of establishing the Unemployment Insurance Scheme on a solvent and self-supporting basis. With the object of providing machinery for the continuing solvency of the scheme, an Unemployment Insurance Statutory Committee has been established. The Committee consists of a Chairman, and not less than three nor more than five members. On this Committee contributors to the scheme, the taxpayer, employers, and employed are represented. Of the members, one is appointed after consultation with organizations representative of employers, one after consultation with organizations representative of employees, and another after consultation with the Government of Northern Ireland. One member shall be a woman.

The duties of the Committee will be, *inter alia*, to examine the financial conditions of the scheme immediately after the close of each calendar year and within two months to make a report to the Minister on the financial conditions of the Unemployment Fund.

The Minister referred to the Committee the question of the operation of the Seasonal Workers (Anomalies) Order, 1931.

**Unemployment Fund.** The borrowing powers of the Unemployment Fund are repealed, but where the Fund is unable to meet its immediate liabilities, temporary loans may be made by the Exchequer. If these cannot be repaid out of the ordinary revenue of the Fund within a limited period the machinery just described will be set in motion to restore the solvency of the Fund and to provide for the repayment of the loans out of the Fund.

The balance outstanding at the commencement of the Act of the advances made to the Unemployment Fund by the Treasury, and borrowed by them from the National Debt Commissioners, amounted to about £115,000,000. Such a debt could not be written off in the sense that it could be made to disappear; it could only be transferred to the National Debt. While this had some obvious superficial attractions, it

should be remembered that if the Insurance Scheme is to maintain its contributory principle, it ought not to be able to continue to pay benefits out of income which it does not possess and then transfer to the general taxpayer the liabilities incurred in carrying out this unsound process. Arrangements were made for this debt to be redeemed both as regards Capital and Interest by the payments of the appropriate number of half-yearly instalments of £2,750,000.

The rate of interest for this purpose has been agreed at  $3\frac{1}{2}$  per cent (subsequently reduced to  $3\frac{1}{8}$  per cent) per annum, with a reservation for the continuation of existing rates for unexpired periods of current advances, which in no case exceeds 5 years. Owing to the conditions created by the outbreak of war in 1939, the Fund is now entirely free from debt.

#### UNEMPLOYMENT INSURANCE ACT, 1935

This is an Act to consolidate the Unemployment Insurance Acts 1920 to 1934, and certain other enactments relating to those Acts and received the Royal Assent 26th February, 1935.

#### UNEMPLOYMENT INSURANCE ACT, 1939

This Act amends the Unemployment Insurance Acts, 1935 to 1938, and provides for the payment of contributions under the National Health Insurance Act, 1936, and the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, in respect of holiday periods. An insured contributor is not to be deemed to be unemployed for the purpose of the principal Act on any day on which he is on holiday, and the Minister may make regulations for determining whether the insured contributor is or is not to be deemed to be on holiday. (Sect. 1.)

Where an employer had been convicted of the offence of failing or neglecting to pay a contribution in respect of any person, or has been charged with such an offence and an order made under the Probation of Offenders Act, 1907, evidence may be given on the conviction or making of the order of the failure or neglect of the employer to pay other contributions during the preceding two years in respect of any other employee. (Sect. 9.)

At any inquiry ordered by the Minister, power is given to the person appointed to issue a summons requiring the attendance of any person to give evidence or to produce any documents; but such a witness shall not be required to go more than ten miles from his residence unless the necessary expenses are paid or tendered to him; refusal or wilful neglect to obey such a summons is punishable on summary conviction by a fine not exceeding £5. (Sect. 10.)

PART II  
OF THE UNEMPLOYMENT ACT, 1934  
which may be referred to as  
*The Unemployment Assistance Act, 1934*

## INTRODUCTION

Part II of the Unemployment Act, 1934, was the first attempt on the part of this or any other country to deal comprehensively on a national scale with practically the whole of the able-bodied unemployed. It was brought forward as a result of very careful consideration of the recommendations of the Royal Commission on Unemployment Insurance. Under the system existing prior to the passing of the Act the able-bodied unemployed were of three categories—

(a) Those receiving benefit by reason of contribution to the Unemployment Insurance Fund. These are now covered by the Unemployment Insurance Act, 1935.

(b) Those under the Unemployment Insurance Scheme who had exhausted their rights to benefit and were in receipt of transitional payments according to determinations made upon the basis of their needs through the machinery of the public assistance committees.

(c) Those not entitled to unemployment benefit or transitional payments and who, if necessitous, were relieved by the public assistance authorities.

There are still virtually three groups—

(a) Those in receipt of unemployment benefit under the Unemployment Insurance Act, 1935.

(b) Those in receipt of unemployment assistance under Part II of the Act of 1934.

(c) Those in receipt of poor relief under the Poor Law as amended by this Act.

Part II deals, not with statutory insurance benefit, but with assistance according to need.

## OBJECT OF THE SCHEME

Local authorities have repeatedly urged that the State should take over full administrative and financial responsibility for the maintenance of all able-bodied unemployed. This was promised, in a qualified manner, by the Minister of Health in the House of Commons in a speech made in April, 1933. To a great extent the Act gives effect to this principle.

The administration of assistance to the able-bodied unemployed

was imposing excessive strain on the machinery of local government, especially in the distressed areas. The Act and the financial provisions made in connection with the scheme will relieve local authorities of a large proportion of a very heavy burden.

The problem of unemployment is not local but national in its scope, and if it is to be effectively handled it must be through some national machinery.

The creation of a Central Authority to administer the Scheme will help in many directions. It will secure fairness and uniformity of treatment, subject to the varying conditions in different areas. The Central Authority will be able to co-operate more fully with Voluntary Associations which have been formed to help the unemployed. It will be able to view the industrial field as a whole, and, through its contact with the Ministry of Labour, will be in a better position than a local body to help the unemployed to transfer to places where work is obtainable.

It will be in a position to finance, co-ordinate, and control the arrangements for maintaining employability of the able-bodied unemployed. The Scheme remedies an injustice, as it will place on an equal footing, so far as State assistance is concerned, the able-bodied unemployed who have exhausted their insurance rights and certain categories of the able-bodied unemployed who have never come within the unemployment insurance scheme.

The scheme has removed a large proportion of the able-bodied unemployed from the purview of the public assistance authorities and the poor law, and will link them more closely with the established machinery, the main purpose of which is to secure for them opportunities of employment.

The Act creates permanent machinery by which the problem may be treated as an industrial problem, not only by the provision of assistance for those out of work, but also by devoting attention to the more important question of finding work for the unemployed and maintaining their efficiency while they are in receipt of assistance from the State, or the local authority.

## THE CONSTITUTION AND FUNCTIONS OF THE UNEMPLOYMENT ASSISTANCE BOARD

The (Unemployment) Assistance Board created under Part II of the Act relieved the public assistance authorities, from 7th January, 1935, of the duties they were performing with regard to transitional payments, and also the administration of assistance required by able-bodied unemployed persons, both those formerly in receipt of Transitional Payments and a large proportion of those formerly in receipt of public assistance.

The Board consists of a Chairman, Deputy Chairman, and not less than one or more than four other members. They must not be Members of the House of Commons. The Board is a body corporate with a Common Seal and power to hold land without licence in mortmain. One member shall be a woman. The Board is appointed by His Majesty by Warrant under the Sign Manual, and the functions of the Board and its officers are exercised on behalf of the Crown. There is plenty of precedent for this, as the method applies to the Charity Commission, the Civil Service Commission, the Railway Rates Tribunal, the Registrar-General, the Board of Control, the Umpire under the Unemployment Insurance Acts, and others.

The salaries of the Board are payable out of the Consolidated Fund, the amount of such salaries being determined by the Treasury at the time of their appointment, so, however, that the aggregate amount shall not exceed the sum of £12,000 per annum.

### LOCAL ADVISORY COMMITTEES

To help it in its work the Board is required to set up local advisory committees, consisting of persons having local knowledge and experience in matters affecting the functions of the Board.

These committees will not consist of the Public Assistance Committees, though it is probable that in many areas certain members of the Public Assistance Committee may be invited to serve on the Local Advisory Committees. They are to be established for such areas as the Board thinks fit, and the Board may pay to members of such committees such travelling and other allowances, including compensation for loss of remunerative time, as the Board, after consultation with the Minister and with the consent of the Treasury, may determine.

These committees are advisory only and are not able to vary the decisions of the Board, or of the Appeal Tribunals.

The Statutory Committee have no statutory responsibility for assessing the needs of an applicant, and no statutory right of intervention.

### APPLICATION OF PART II OF THE ACT

As the phrase "able-bodied unemployed" has so many meanings, it was thought proper to define the scope of the Board by reference to some existing statutory definition. Accordingly, the scheme extends to all persons between the ages of 16 and 65 whose normal occupation is employment in respect of which contributions are payable under the Widows', Orphans', and Old Age Contributory Pensions Acts, 1936 to 1940, or who can show that, not having had any remunerative occupation, they might

have such insurable occupation but for the industrial circumstance of the district in which they reside, and who are capable of and available for work. This has the widest scope of any of the statutes dealing with the social services, including particularly agriculture, domestic service, female nurses, outworkers, and those under certificates of exemption from insurance. Persons who are disqualified for benefit under the Unemployment Insurance Acts owing to having lost employment by reason of a stoppage of work due to a trade dispute, or who would have been so disqualified if they had been insured contributors, are excluded from the scope of the Board for the period of the disqualification.

Broadly speaking, therefore, the classes of persons within the new scheme comprise (1) persons who come within the former transitional payments scheme, and (2) necessitous able-bodied persons, including non-manual workers with incomes below £420, whether insured against unemployment or not, who come within the scope of the Widows', Orphans', and Old Age Contributory Pensions Acts, and who, prior to the passing of the Act, if necessitous, were relieved by the public assistance authorities. The Act does not cover hawkers, pedlers, news-vendors, shopkeepers, persons casually employed, commission agents and subsidiary employments.

The field of those brought within the national scheme of Unemployment Assistance was probably four million persons.

It should be observed that poor law principles of settlement and removal do not apply to unemployment assistance, nor the disqualification for membership of a local authority.

## REGULATIONS

Regulations constitute an important feature of the organization. The draft Regulations require the approval of Parliament. New Regulations took effect on the 16th November, 1936. The second appointed day was postponed to the 1st April, 1937, on which date most of the able-bodied poor came under the control of the Unemployment Assistance Board.

## TRAINING COURSES

The Part of the Act dealing with training is carefully drawn so as to prevent any interference with the schemes of voluntary occupation which are developing all over the country, though it gives the Minister statutory power to aid such work.

In the case of boys and girls under 18, provision of training becomes a statutory duty upon the local Education Authority with the help of an Exchequer Grant, and it is intended that the compulsory training at Juvenile Instructional Centres shall be



fully general. As regards adults the Act gives power to the Minister and the Board to send a man to a training centre.

It will be observed that the scope of the scheme is wide enough to embrace those who are at training centres and various kinds of instruction classes and the like.

For the purpose of the foregoing qualifications, a person shall be eligible who has attended at—

(a) an authorized course under the Unemployment Insurance Act, 1935; or

(b) a training course; or

(c) a course of instruction approved by the Minister; or

(d) at a training course or courses or works centre or other similar place.

The idea of this provision, *inter alia*, is to clear up any misunderstanding that might arise as to eligibility to receive an allowance in the event of attendance at any of the four types of courses described.

These powers are not altogether new. Since 1911 it has been possible to require a claimant for insurance benefit to attend a training centre as a condition of receiving benefit. It is not financially expedient to provide centres which all the unemployed can be compelled to attend. Training will not be a deterrent or a punishment. It is designed in the interests of the unemployed and substantially it is probable that the present principles of recruitment will be followed.

### DETERMINATION OF APPLICATION FOR ALLOWANCES

All applications for allowances under Part II of the Act and all questions arising in connection with such applications are determined by Officers of the (Unemployment) Assistance Board.

Applicants for assistance must be registered at an Employment Exchange in order that they may be kept in touch with opportunities of employment in the same way as other work-people on insurance benefit. Generally, they also receive their unemployment allowances at the Employment Exchange.

The administration is through the Officers of the Board co-operating, for certain purposes, with the Employment Exchanges. Investigation into applications may be carried out on behalf of the Board by officers of the local authorities, but such arrangements as existed have been continued.

### ASSESSMENT OF NEEDS

The Board was required to submit to Parliament, through the Minister, regulations dealing with the standard and policy of the Board, including the assessment of need. Thus, not only

have the standards of the Board received the sanction of Parliament, but in the process a greater measure of uniformity is achieved.

A family needs test has been substituted for the household needs test. Payments will be in cash, relief in kind being restricted to cases of special difficulty. Certain classes of resources will be protected in manner similar to the poor law and the provisions of the Determination of Needs Act, 1932, which Act is repealed and re-enacted in the new Act of 1941, but with modifications and amendments.

The following are to be disregarded—

(a) The first five shillings of the applicant's sick pay from a Friendly Society, and the first 10s. 6d. of the applicant's benefit under the National Health Insurance Acts, and the whole of any Maternity Benefit (exclusive of any increase of such benefit by way of additional benefits and of any second maternity benefit) shall be disregarded. The Minister accepted an amendment that the first 5s. of the sick pay from a Friendly Society of any member of the household should be disregarded.

(b) The first £1 of any wounds or disability pension shall be disregarded.

(c) Any weekly payment by way of compensation under the enactments relating to Workmen's Compensation shall as respects one-half thereof be disregarded.

(d) All money and investments treated as capital assets shall—

(i) in so far as the value of all such money and investments considered in the aggregate does not exceed twenty-five pounds, be disregarded;

(ii) in so far as that value exceeds twenty-five pounds but does not exceed four hundred pounds, be treated as equivalent to a weekly income of sixpence for every complete twenty-five pounds;

(e) In taking into account the value to any person of any interest in the dwelling-house in which he resides, any sum which might be obtained by him by selling, or borrowing money upon the security of that interest shall be disregarded.

It is particularly desirable that the determination of need shall not be regarded as a destitution test. The determination is made by an officer of the Board of what he believes to be the man's need in accordance with the regulations approved by Parliament. Needs for this purpose do not include medical needs. The first Regulations of the Board broke down because they failed to

provide for the varied necessities and circumstances of individual cases, but attempted to deal with all applicants on a uniform national basis. Recognizing that the immediate creation of separate local organizations would involve an unjustifiable lack of economy in areas where the total number of persons coming under their control would be few and scattered, the Board requested County Councils in such areas to allow their officers to act on behalf of the Board for the purpose of making investigations and determinations. This arrangement has been terminated.

### APPEAL TRIBUNAL

Any question which may arise whether Part II of the Act applies to a particular person or not will be decided by officers of the Board. But an applicant for an allowance or any public assistance authority has a power of appeal from any such decision to the Chairman of the Appeal Tribunal. These tribunals are not subject to the orders of the Board. The constitution is in accordance with the Sixth Schedule to the Act, which is very similar to the Court of Referees under the Unemployment Insurance Acts. Every Appeal Tribunal consists of a Chairman and two other members. The Chairman is appointed by the Minister, and of the two other members one is appointed by the Unemployment Assistance Board from a panel of persons nominated by the Minister to represent workers, and the other is appointed by the Board to represent the Board.

If any person is aggrieved by a determination he may appeal to the Appeal Tribunal, and any determination of the Appeal Tribunal shall be final. (Appeal Tribunal Rules, 1935.)

### ISSUE OF ALLOWANCES

The allowances granted under Part II of the Act shall, in accordance with the Rules under this Part of the Act, be issued by Officers of the Board, or by arrangement with the Minister by any of his Officers or by arrangements with the Education Authorities by the Officers of those authorities. The Education Authorities continue, therefore, to deal with juvenile unemployed as heretofore.

It is also provided that the Rules made under this Part of the Act may, with the concurrence of the Postmaster-General, authorize the payment of allowances through the Post Office in such cases as may be provided by the Rules. This has been arranged in order to provide a convenient method of payment in rural areas and for those in training centres in areas remote from Employment Exchanges.

### METHOD OF DEALING WITH CASES OF SPECIAL DIFFICULTY

Having regard to the wide scope of the scheme there will be a limited number of cases of special difficulty where the applicant has shown that he cannot be properly dealt with by the ordinary procedure under the Act, e.g. where a husband is failing to support his wife and family.

The Board is given power to attach conditions to the grant of assistance, failure to comply with the conditions rendering the applicant unable to receive assistance from the Board. There is a right of appeal to the Appeal Tribunal.

Where an applicant persistently breaks the conditions or persistently refuses or neglects to maintain himself, the Board may apply to the Appeal Tribunal for the exclusion of the applicant from their jurisdiction for a period. In such cases the applicant cannot be properly considered as one of the ordinary industrial unemployed for whom the scheme is designed. In such cases the Officer of the Board or Appeal Tribunal may determine that the case may be dealt with in one of four ways, which are detailed in Sect. 40 (4) of the Act.

### FINANCE

The Act provides for the establishment of an Unemployment Assistance Fund to meet the liabilities incurred under this part of the Act, financed by moneys voted by Parliament and the contributions received from the local authorities. From the Fund all the expenses of the Board were paid except the salaries of the Board which, as already described, were charged to the Consolidated Fund. The Fund was wound up under the Unemployment Assistance Fund (Closing) Order, 1941.

The Act required the council of every county and county borough to make an annual contribution towards the expenses of the Board. This is an entirely new principle, and is considered to be the first instance in which the local authorities have been required to make a direct contribution towards what will become a State service, over which they will have no control. This contribution is now merged in the block grant arrangements of the Local Government Act, 1929, in accordance with the Local Government (Financial Provisions) Act, 1937.

### REMEDIAL MEASURES

Unemployment could never be wholly eliminated, but it could be reduced to manageable proportions. The State endeavoured to deal with the problem along various main lines of effort, viz.—

**(a) Safeguarding the home by**

- (i) Old Age Pensions and Orphans' Allowances.
- (ii) National Health Insurance.
- (iii) National Unemployment Insurance.
- (iv) Unemployment Assistance.

**(b) Assistance of home trade by**

- (i) Trade Boards.
- (ii) Agricultural Wages Regulations Boards.
- (iii) The De-rating of Agricultural Land and Buildings, as provided by the Local Government Act, 1929, Part V.

**(c) The stimulation of foreign trade under**

- (i) The Trade Facilities Acts.
- (ii) The Export Credit Schemes.
- (iii) Colonial Development Act, 1929.
- (iv) Development (Loans Guarantee and Grants) Act, 1929. (Lapsed.)
- (v) Partial De-rating of Industrial and Freight Transport Hereditaments.
- (vi) Departure from the Gold Standard, 1931.

The Overseas Trade Acts, 1934, extended to 31st March, 1940, the period within which new guarantees might be given under the Acts in connection with export transactions, and extending to 31st March, 1950, the period during which guarantees so given may remain in force. The scheme is really a system of insurance under which the State agreed to guarantee payment up to 75 per cent of the value of contracts entered into by business men in this country with foreign countries.

**(d) Relief Works, including—**

- (i) The Unemployment Workmen Act, 1905, which was repealed as from the 31st March, 1930, by the Local Government Act, 1929.
- (ii) The Unemployment (Relief Works) Act, 1920, superseded by—
- (iii) The Public Works Facilities Act, 1930. (Lapsed.)
- (iv) The Unemployment Grants Committee. (Lapsed in 1931.)
- (v) Appointment of Commissioners for the Special Areas under the Special Areas (Development and Improvement) Acts, 1934 to 1937. (Now Grants to Development Areas.)
- (vi) Distressed or Special Area Grants.
- (vii) The speeding up of Government work, e.g. the Forestry Commission, Post Office, War Office, Admiralty, Air Ministry.
- (viii) Board of Trade powers under the Distribution of Industry Act, 1945, which suspended provisions under (v) and (vi) above.

The areas affected are now known as Development Areas.

(e) **Transfer of Labour**

- (i) Assisted emigration.
- (ii) Industrial transference.

(f) **Stimulation of Industries by—**

- (i) Imposition of Import Duties and Quotas.
- (ii) Implementing of Marketing Schemes.

It is only possible to refer to several of these schemes which are in operation and which have particular reference to local authorities.

## **MUNICIPAL RELIEF WORKS**

As already stated, the idea of municipal relief works to mitigate the effects of unemployment originated in 1886, encouraged by the Local Government Board's circular to local authorities. The failure of the Unemployed Workmen Act, 1905, and the futility of Labour Exchanges and National Insurance to cure the evil of unemployment, necessitated further action to deal with what has become a gigantic national burden. With the winter of 1920-21 rapidly approaching, the London County Council, anticipating further distress, pressed the Government to take further steps for the relief of unemployment. The Unemployed (Relief Works) Act, 1920, was hurriedly passed to facilitate the acquisition of and entry upon land required for works of public utility, as detailed below. At the same time, the Government established a fund to be provided out of Parliamentary grants to assist local authorities in the execution of their schemes of relief. A committee, under the chairmanship of the Right Hon. Viscount St. Davids, was set up to administer the grants, and is referred to later.

## **THE UNEMPLOYMENT (RELIEF WORKS) ACT, 1920**

The objects of this Act were to make better provision for the employment of unemployed persons by facilitating the acquisition of and entry on land required for works of public utility and for purposes connected therewith. The Minister of Transport or, with the approval of the Minister, any local authority, may enter upon and take possession of any land required for or in connection with the construction of any arterial road which they have power to construct, or which is required by the local authority for the improvement of any road, with a view to the employment of unemployed persons in the construction or improvement of the road. The works of public utility so assisted are roads, bridges, and viaducts, the widening or other improvement of waterways, the construction or improvement of

harbours, the construction of sewers or waterworks, afforestation, the reclamation or drainage of land. This Act has been replaced in great measure by the Public Works Facilities Act, 1930.

### THE UNEMPLOYMENT GRANTS COMMITTEE

This Committee was constituted by Treasury Minute dated 20th December, 1920, under the chairmanship of the Right Hon. Viscount St. Davids for the purpose of assisting local authorities in the United Kingdom in carrying out approved schemes of useful work other than work on roads and on housing schemes.

The section of the schemes to be assisted and the amount of the assistance to be given in any particular case were left to the decision of the Committee, who were instructed in coming to a decision to observe the following general principles—

1. The expenditure was originally not to exceed a total of £3,000,000.
2. Works to be approved only in areas where the existence of serious unemployment not otherwise provided for was certified by the Ministry of Labour.
3. Preference in employment to be given to unemployed ex-service men.
4. The grant not in any case to exceed 30 per cent of the wages bill of additional men taken on for work.
5. The works to be such as approved by the appropriate Government department as suitable works of public utility.

The terms of reference were amended as follows—

1. The financial limit of the grants was extended from 30 to 60 per cent of the wages bill.
2. The Committee was authorized to assist (in addition to local authorities)—

(a) public bodies ("public body" was defined as any board, commission, rating authority, or trustees, or other body or persons who manage or undertake work in pursuance of statutory powers, not being a body trading for profit); and

(b) through the local authority, public assistance authority, or voluntary agencies.

3. The Committee was empowered to assist roads other than those coming within the Ministry of Transport's schemes for construction or maintenance grants.

The works consisted largely of schemes of permanent value to the districts in which they were carried out, such as improvements and extensions of dock and harbour facilities; the execution of water, electricity, gas, and sewerage works; the formation of roads, the provision of parks and recreation grounds, etc.

The Unemployment Grants Committee in December, 1929, informed all local authorities that the Government had decided in respect of certain types of schemes approved for Government grant to effect an improvement in the rates of grant made under the Development Act, 1929. In certain respects the conditions were modified as to the employment of men drawn from areas selected by the Ministry of Labour. The Committee lapsed in 1931.

### RATE OF UNEMPLOYMENT GRANTS

In June, 1930, the Prime Minister arranged a conference between representatives of local authorities and the Ministers of Health and Transport. A statement of policy was made and new conditions outlined. Following the conference, the new terms and conditions were published in the following documents.

Ministry of Health Circular 1,126, 3rd July, 1930.

Ministry of Transport—No. 334, Roads.

Unemployment Grants Committee—No. 26.

The new rates of grants were as follow, viz.—

#### A. Schemes Financed by way of Loans:

##### 1. NON-REVENUE PRODUCING SCHEMES:

75 per cent of the annual loan charges for the first half of the loan period up to 15 years.

37½ per cent for the remainder of the period up to 15 years.

##### 2. REVENUE-PRODUCING SCHEMES:

(a) Normal works—50 per cent of the interest for the loan period or 15 years, whichever is the shorter.

(b) Special works of high economic value and of not less than £100,000, e.g. docks and waterworks.

100 per cent of interest up to an approved date.

50 per cent thereafter for 15 years in all.

(c) Special Public Health Works, e.g. rural water supply, and baths and washhouses.

100 per cent interest for seven years.

50 per cent thereafter or for eight years, whichever is the shorter.

#### B. Schemes Financed out of Revenue:

1. Abnormal unemployment areas (exceeding 15 per cent), 90 per cent wages of unemployed men engaged.

2. Other areas, 75 per cent thereof.

### RURAL WATER SUPPLIES

The Minister of Labour announced in the House of Commons on 18th December, 1930, that, after consultation with the Rural



District Councils Association, a variant of the terms of special grant available for schemes of work involving the construction of rural water supplies had been decided on to enable a grant to be made where the construction of the supply was conditional on the authority guaranteeing a certain revenue to a neighbouring local authority carrying out the works and providing the supply.

In such cases the Unemployment Grants Committee were authorized to recommend a grant to the authority to assist in meeting deficits of revenue to be made good under the guarantee.

The grant authorized was a sum equal to the amount by which the income receivable in respect of the year falls short of 75 per cent of the guaranteed revenue in respect of that year, payable for the term of the guarantee or a period of ten years, whichever is shorter, but limited for any year to 5 per cent of the capital cost of the works.

### **EQUATION OF GRANTS**

Local authorities were allowed to arrange with the Unemployment Grants Committee to receive equal annual payments over the whole period of the loan equivalent to the normal payments, and in this way spread the burden of the loan charges equally over the whole period, thus preventing a sudden increase in the annual charges when the grants would normally cease and when expenditure on repairs and renewals would begin to create an additional burden.

### **THE PUBLIC WORKS FACILITIES ACT, 1930**

This Act was passed in an endeavour to increase the volume of employment by the acceleration of schemes and the simplification of procedure. For works of a non-contentious nature, which in principle have already received the approval of Parliament, a Private Bill is no longer necessary, the Minister having power to issue an Order conferring the necessary powers.

A local authority must prepare a scheme showing all necessary particulars with plans and detailed estimates, together with a copy of the resolutions making application for the loan necessary to finance the scheme. The local authority borrows the money in the first instance, and receives annual grants towards the yearly charges for repayment. The scheme must be submitted in duplicate and must state whether the works will be revenue producing or not, the number of men likely to be employed, and for how long. If the local authority intends to carry out the work by direct labour they must supply particulars of the rate of wages to be paid and the prevailing rates in the district. The Ministry of Labour is notified of the application and must certify

that unemployment in the district is serious and not otherwise provided for. Grants will not be made for works already in receipt of grants from the Government. The labour must be recruited from the Employment Exchange, and the men released if other work is found for them. The Public Assistance Department may make nominations for men to be taken for the work; 75 per cent of the men must be ex-service men. The local authority may employ up to 10 per cent of the men from their permanent staff for purposes of supervision and control, but no grant will ordinarily be payable for these. The rate of wages must not exceed the rate paid by the local authority to its own men on similar work or the recognized district rate, whichever is lower. It is a condition of all unemployment grants that all contracts and orders for materials incidental to the works shall be placed in the United Kingdom, subject to such exceptions as may be allowed.

#### NATIONAL ECONOMY ACT, 1931

These provisions relating to unemployment relief works have been suspended in accordance with the National Economy Act, 1931, and the Orders in Council issued thereunder, and the Unemployment Grants Committee also lapsed in 1931.

#### TAXATION OF UNEMPLOYMENT GRANTS

The case of *Crook v. Seaham Harbour Dock Company*, 1931, 48 T.L.R.91, 16 T.C. 333, is of considerable importance to those bodies receiving unemployment grants. The inspector of taxes claimed that the grants received by the company were liable to assessment to income tax as annual recurring receipts utilized to meet annual recurring expenditure. The company claimed that the grants were made to assist capital expenditure, and not liable to assessment. The General Commissioners, who supported the view of the Inspector, stated a case for appeal to the High Court, where the appeal of the company was dismissed. The Court of Appeal has, however, reversed that decision, and this decision was confirmed by the House of Lords in November, 1931. The importance of the matter to local authorities is that in such schemes the net assistance given would have been less than the statutory grant if the Inland Revenue's contention had prevailed.

#### THE AGRICULTURAL LAND (UTILIZATION) ACT, 1931

The object of this Act is the promotion of the cultivation of allotments by the unemployed, and a committee was set up under the chairmanship of Sir William Waterlow, K.B.E., for the purpose of promoting generally the cultivation of allotment

gardens by unemployed persons, or persons not in full-time employment, and to stimulate the formation of voluntary local committees or societies for the furtherance of that object, and also to make arrangements for the provision of seeds, fertilizers, and equipment for such persons, and to promote the constitution of an unincorporated body for that purpose.

### THE SPECIAL AREAS (AMENDMENT) ACT, 1937

This Act was intended to induce a variety of industries to go to those areas so that they should not be concerned for their prosperity upon the prosperity or adversity of one or two industries. It has been repealed and replaced by the Distribution of Industry Act, 1945.

### REINSTATEMENT IN CIVIL EMPLOYMENT ACT, 1944

This Act provides for the reinstatement in civil employment of persons who are, or have been, in the service of the Crown or in civil defence forces. A person leaving the Forces may apply to be reinstated in employment by the employer by whom he was last employed within the period of four weeks immediately before his war service commenced.

The employer is obliged to take the applicant into employment in the occupation in which he was last employed on terms and conditions not less favourable than would have been applicable to him had he not joined the services. If it is not practicable to reinstate an applicant in that occupation and on those terms and conditions, he must be given the most favourable occupation and on the most favourable terms and conditions which are reasonable and practicable in his case.

The Act prescribes the manner in which applications for reinstatement are to be made.

Under the provisions of the Act employers are obliged to continue to employ reinstated employees for 26 weeks or so much thereof as is reasonable and practicable.

For the purpose of determining questions and enforcing the provisions of the Act, Reinstatement Committees have been appointed by the Minister of Labour and National Service. Appeals from Reinstatement Committees may be made to an umpire.

The Beveridge Plan, 1942, and White Paper on Employment, 1944, and the subsequent legislation are dealt with in *Social Administration*, Fifth Edition, 1945.

## SECTION VII

### LOCAL FINANCE

#### CHAPTER XXVI

##### GRANTS IN AID

"By a 'Grant in Aid,' the English administrator understands a subvention payable from the Exchequer of the United Kingdom to a Local Governing Authority, in order to assist that Authority in the execution of some or all of its statutory duties. The subvention may be an isolated payment, but is usually recurrent or annual. It may be a matter of statutory obligation or dependent on the recurring decision of the Minister in charge of a particular department. It may be unconditionally of fixed amount, or variable according to the circumstances of the time. Most important of all, its variable amount may be dependent on the growth of population, or of a particular section of it, or the amount of some particular service, on the number of officers appointed or the sum of their salaries, on the expenditure of the receiving authority, on the rateable value of its district, on the efficiency of its work, or on some other condition." (Sidney Webb.)

The principles involved in subventions from Imperial funds towards local expenditure are fully dealt with in the reports of the Royal Commission on Local Taxation, which was appointed in 1896 and issued its final report in 1901, and in the report of the Departmental Committee which was issued in 1914, and are summarized in the words of the Royal Commission "to what extent the Government, having regard to the incidence respectively of Imperial taxation and local rating, should raise money in respect of services which are administered by local authorities in order to secure that the revenues are raised equitably." The findings of the Royal Commission and the Departmental Committee are dealt with more fully later in this chapter.

A statement showing the various services aided and the basis of the grants paid is given at the end of the chapter.

#### ADVANTAGES CLAIMED

It is claimed in favour of grants in aid that many local services which concern the general welfare are enforced by Parliament

and are really national services administered locally. Such expenditure is "onerous" and should be in some way met by State assistance. These grants from the State are not compassionate grants but a charge which should fall on the taxpayer. Without this aid and consequent partial retention of control, it is probable that the intended benefits would fall short of the desired result. The grants in aid act as a stimulus to negligent authorities and enable Parliament to secure a uniformity of administration of certain functions which should be supervised and co-ordinated by experts. It may be asked, if the money comes out of the "public purse," does it matter whether payment is made out of rates or taxes? The answer is that the incidence of rates and taxes is entirely different, the former being based upon the annual value of property occupied and the latter upon annual income or the value of certain commodities consumed. Many persons who enjoy the benefits of rate-borne expenditure escape rateability but are caught in the net of taxability. Personal property escapes rateability as also do trading profits. Many non-occupiers in the rating sense, such as hotel residents, lodgers and unmarried persons living with their parents, escape rateability. Taxes, moreover, are based more equitably on "ability to pay." Revenue is more readily obtained by grants for important local services, which, if provided for by a local rate, might be stunted.

The recent increase in the burden of assistance to the unemployed has shown that local government in the distressed areas would have broken down but for the recognition by the State of the necessity and equity of bearing a large proportion of the costs out of national taxation. The Government have been able to equalize certain local burdens to some extent over the whole country by means of grants. Examples of this method of equalization may be found in the highly rated area grant for education expenditure, the housing grant under the 1919 Act whereby local burdens were limited to the produce of a rate of 1d. in the £, and the Slum Clearance grant based upon the number of persons displaced from houses unfit for occupation. The block grant formula contained in the Local Government Act, 1929, accomplishes, to some extent, the same end in providing a scheme whereby the money flows to the areas with the greatest needs. Finally, the bearing of part of the burden provides an effective reply to any change of bureaucracy which may be levelled at the Government for "interference" in local affairs.

### DISADVANTAGES URGED

On the other hand, it is sometimes asserted that it is a dangerous principle to establish a system by which great claims can be

made on the National Exchequer. There cannot be any effective Parliamentary control over such expenditure, nor any guarantee of economy. So far as the local authorities are concerned, subsidies granted to them without responsibility are apt to be lavishly expended. In addition, it is difficult to define accurately the proper subjects for relief, the proportion of the grant in aid, or the amount of contribution to the different areas. Where a service is met partly by national and partly by local payments, the full cost of such services is not made plain; hence the danger of extravagance.

### METHODS ADOPTED

Various methods have been adopted to distribute national grants to local authorities. The police grant has always been based upon a percentage of the expenditure of the local authority. Under the Local Government Act, 1888, the Government assigned the proceeds of certain taxation to the local authorities. The Housing Act, 1919, fixed the maximum burden of the local authority at the proceeds of a rate of 1d. in the £ and the Government accepted the excess burden themselves. The Local Government Act, 1929, provided a block grant, the national pool being distributed according to a formula securing that the money should flow to the local authorities according to their local needs. It is becoming increasingly recognized that, providing satisfactory units can be secured, the most advantageous basis would be to distribute grants upon the basis of a defined unit of expenditure. This method was partially adopted with the introduction of the Fisher formula for education grants in 1918. The basis of the education grant is a certain sum per scholar in average attendance.

### CONTRIBUTIONS IN LIEU OF RATES ON CROWN PROPERTY

According to our constitutional and political principles the Crown is not bound by statute law unless so provided therein. As the Crown was not mentioned in the Statute of Elizabeth, 1601, poor rates could not be assessed on property occupied by the Crown or servants on behalf of the Crown. Premises occupied by the Government were exempt under this rule. Ex-gratia payments were made on Government offices in London from an early date. A Select Committee appointed in 1858 to inquire and report upon the matter recommended the removal of the exemption except in certain minor cases. In 1860 a definite policy was adopted to pay a contribution in parishes where the Government property amounted to one-seventh of the total

rateable value of the parish. This increased the grant from £18,000 to £35,000 for that year. A Treasury Minute of 1874 abolished the one-seventh restriction and a Minute of 1896 provided for regular revaluation and placed Government properties upon the same basis as private properties except that the valuation of the property remained in Government hands. The Telegraph Act, 1868, Sect. 22, made telegraphs *acquired under that Act* rateable at the value at which they were properly assessed or assessable when acquired. In other cases where the properties are used exclusively for Crown purposes a valuation is made by the Treasury Valuer and the payment takes the form of an ex-gratia payment and may be regarded as a grant in aid of local expenditure. The contributions in lieu of rates in England and Wales amount to approximately £2,000,000, but rating authorities do not consider this represents adequate compensation for their loss of rates on Government properties. The case of the *Derby Territorial Army*, [1935] 2 K.B., 373, 33 L.G.R. 285 has made it plain that the Rating and Valuation Act, 1925, Sect. 64 (3), does not require that the occupation by the Crown must be exclusive.

#### GRANTS PRIOR TO THE LOCAL GOVERNMENT ACT, 1888

**Education.** One of the earliest steps taken by the Reformed House of Commons was to provide public funds in aid of popular education. On the 17th August, 1833, a grant of £20,000 was passed to assist in the erection of school buildings for the education of the children of the poorest classes in Great Britain during the year ending the 31st March, 1834. This occasion is historic not only because it was the genesis of national interest in public education but it also inaugurated the system of state grants in aid of local services. The administration of this money did not pass immediately to local authorities, as we know them to-day, as they were not then authorized to provide educational facilities. For some years the grants were paid to two voluntary bodies, the National School Society and the British and Foreign School Society, which represented anglican and nonconformist interests respectively. It was a condition precedent to the receipt of these grants that an equal sum should be provided from private sources. It is interesting to observe that this first grant was a block grant paid upon a percentage basis.

In 1839 the building grant, which had become annual, was increased to £30,000. In 1843 grants were made towards the erection and enlargement of teachers' houses, the provision of furniture and apparatus, and the erection of training colleges. In 1846 grants were first paid to teachers in aid of their salaries,



which were then shamefully inadequate. In 1853, capitation grants (per scholar in attendance) commenced. These grants were paid under the Minutes of the Education Department, confirmed by Parliament. In 1853 grants were first paid towards annual income, the basis chosen being a sum per scholar per year. The Schools Grant Act, 1855, Sect 1, provided that where a grant has been made by Parliament towards the purchase of the site or the erection of a school, no sale, exchange, or mortgage of the premises shall be valid unless the consent of the Home Secretary (now the Minister of Education) has been obtained, or the amount of the grant repaid. This is still operative. In 1860 the Minutes were consolidated in Robert Lowe's Original Code. The following year the Newcastle Commission made recommendations for improving the grant system and in 1861 a Revised Code was issued and a new system of grant payment known as "payments by results" was introduced, based upon the number of scholars under 16 years passing an annual examination in "the 3 R's" (reading, writing and arithmetic). With the establishment of school boards under the Elementary Education Act, 1870, the grant was continued in an amended form. An additional grant was provided in aid of necessitous areas where the produce of the rates fell short of a fixed sum per scholar. Building grants were abolished. In 1875 grants were started, based upon "class subjects." In 1882 "merit grants," based upon the result of an inspector's report, were introduced. Special assistance was given to schools in sparsely populated districts, under the Elementary Education Act, 1876. Grants were unaffected by the Local Government Act, 1888, and are detailed later.

**Police.** In 1833 a grant of one-quarter of the cost of the pay and clothing of the Metropolitan Police was provided out of national funds. The Royal Commission on Police Forces appointed in 1836 recommended the extension of this grant to the proposed new county forces, but it was not paid immediately upon their establishment in 1839. A Select Committee in 1853 again recommended State assistance and the County and Borough Police Act, 1856, extended the grant to all provincial forces. The Police (Expenses) Act, 1874, increased the proportion to one-half for the provincial forces only. The Metropolitan Police grant was fixed at the equivalent of a rate of 4d. in the £ in 1878. The police grant was payable only upon a certificate of efficiency in point of numbers and discipline issued by the Secretary of State. The grant was used to encourage the amalgamation of the smaller borough forces with the county constabulary as it was not paid to boroughs with a population of less than 5,000.



**Criminal Prosecutions.** In 1835 a grant was paid to cover the cost of the removal of prisoners from local prisons, then under the control of local authorities, to convict prisons. In 1846 a grant of 4s. per week was made towards the maintenance of prisoners in local prisons. The object of the grant was to avoid deportations (e.g. to Botany Bay), which were accompanied by many evils. From 1836 to 1846 one-half the costs of criminal prosecutions at assizes and quarter sessions was paid by the Exchequer and from 1846 the whole were so paid. Compensation paid to clerks of the peace were included in this Grant.

**Poor Relief.** In 1846 the first grant in aid of the poor law service was made. The Treasury undertook to pay one-half of the salaries of Poor Law Medical Officers, the cost of drugs and medical appliances and the salaries of teachers and trainers in Poor Law Schools. The grant was intended to act as an inducement to secure the services of more efficient officers. The amount towards teachers' salaries was based on the qualifications of the teacher and the number of children taught.

**Vaccination Fees.** Under the provisions of the Vaccination Act, 1867, Sect. 5, the payments to public vaccinators by parish authorities were augmented by a payment of not exceeding 1s. for each child *successfully* vaccinated, such additional sums being paid by the Treasury.

**Sanitary Officers' Salaries.** In 1873 a grant was made to Sanitary Authorities of one-half of the salaries of their medical officers of health and sanitary inspectors. The grant was paid according to regulations made under the Public Health Act, 1872, by the Local Government Board. The object was to control the appointment, payment and dismissal of these officers. The new Act necessitated the appointment of officers with a high standard of skill and attainments to carry out its provisions. With the aid of this Grant, local authorities were encouraged to appoint competent officers. Such officers were able to discharge their duties faithfully without fear of capricious dismissal as a result of their actions.

**Pauper Lunatics.** With a view to encouraging the removal of pauper lunatics from the general workhouse, in 1874, a grant of 4s. per week was made for each person maintained in a separate institution. A *per capita* basis was selected in order to provide a strong inducement to economy by the local authorities. The figure of 4s. was approximately the increase in the cost as compared with workhouse maintenance.

**Registrars of Births, Deaths, and Marriages.** In 1874 the Registrar-General was made responsible for the collection of vital statistics, and a grant was made to boards of guardians towards the

increased cost of registration necessitated by these additional duties.

**Highways.** No less than five different kinds of highway authorities existed before 1888. The Highway and Locomotives (Amendment) Act, 1878, created a new class of road, by declaring that any road which had been since 1870 or should thereafter be disturnpiked, was to be deemed to be a main road, and one half the cost of maintenance was imposed upon the county authorities.

In order to encourage the freeing of turnpike roads from the objectionable toll-bar system a grant was made to the highway authorities in 1882 of one half the cost to them of the maintenance of main roads. As the county justices were already paying one half the cost, the grant was equal to one-fourth the whole cost. In 1887 a further State grant of one half the cost to the justices was paid, thus making one half the whole cost a State charge.

#### THE FINANCIAL REORGANIZATION OF 1888

The Local Government Act, 1888, created county councils with the object, *inter alia*, of transferring to those councils the administrative functions of local government previously performed by the justices in quarter sessions. At the same time a reconstruction of the financial relations of the central government and the local authorities was undertaken. The central government was desirous of discontinuing the method of paying several grants to different authorities for various purposes. In lieu of these grants it was decided to assign the proceeds of certain taxation to local government purposes, and, in order that the central department might have to deal with a considerably smaller number of local authorities, these proceeds were made payable in the first instance to the county and county borough councils for disbursement to those authorities who had previously received payments directly from the central government. Moreover, as the local authorities had been complaining that the grants they were receiving were inadequate for their growing necessities, the assignment of a source of revenue which was expected to be of an expanding nature was intended to meet the increasing needs of the local authorities.

One reason strongly urged in support of State aid was that local rates were based upon occupation of real property, whereas personal property escaped rateability whilst the benefits of local public expenditure are general. In their choice of subjects for the assigned revenues, Parliament had regard to such revenues as were deemed to be derived from other than real property, such

as the probate duties. One object in the choice of this source of revenue, therefore, was to secure a contribution from personalty towards local expenditure. To provide revenue considered likely to expand with the growing demands of local administration, the licence duties were chosen.

It was also decided at this time to make a State grant towards the expenditure of boards of guardians on salaries of poor law officers and provision for this purpose was included in the settlement made under the Act. This is referred to as the new union officers' grant.

The following table shows the amount of the grants paid directly to local authorities for the year ending the 31st March, 1888.

<i>Grant</i>	<i>Amount</i>	<i>Payable to</i>
Metropolitan Police . . .	570,841	Metropolitan Police Force.
Provincial Police . . .	864,082	County Justices, Police Boroughs.
Criminal Prosecutions . . .	145,600	County Justices and Quarter Sessions Boroughs.
Poor Law Teachers . . .	36,825	Boards of Guardians.
Poor Law Medical Services . . .	149,432	
Public Vaccinators . . .	17,313	
Registration of Births and Deaths . . .	9,500	
Sanitary Officers' salaries . . .	73,960	Guardians, Boroughs, Local Boards of Health.
Pauper Lunatics . . .	485,264	Guardians, Boroughs, County Justices.
Highways . . .	507,567	Various Highway Authorities.
<u>£2,860,384</u>		

Education grants are not included in the above statement as they were not discontinued and the existing system continued as far as education was concerned.

The assigned revenues which replaced these grants consisted of certain excise licence duties (Sect. 21) which became known as the local taxation licences (a list of these were set out in the First Schedule to the Act), together with a proportion of the probate duties and also penalties and forfeitures in connection therewith (Sect. 19). The rate of probate duties was 3 per cent and one-half thereof was allocated for local purposes. Eighty per cent of this  $1\frac{1}{2}$  per cent was apportioned to England and Wales and the balance between Scotland and Ireland (Scotland 11 per cent, Ireland 9 per cent).

The duties consisted of stamp duties charged on affidavits required from persons applying for probate or letters of administration or on such accounts of personal and moveable property

disposed of during a testator's lifetime (Customs and Inland Revenue Act, 1881, Sect. 81) together with the proceeds of all penalties and forfeitures recovered in relation thereto. The Finance Act, 1894, Sect. 19, abolished the probate duties and substituted therefor estate duty on personal property.

The Local Government Act, 1888, directed the Commissioners of Inland Revenue to pay the proceeds of the assigned revenue into a Local Taxation Account of the Exchequer at the Bank of England (Sect. 20). Out of this Account payments were directed to be made to the newly-established county and county borough councils under the direction of the central department.

As the result of subsequent legislation (Finance Act, 1907, Sect. 17 (2)), the proceeds were paid into the Exchequer in the first instance and an equivalent sum paid into the Local Taxation Account out of the Consolidated Fund.

The basis laid down in the Act for the distribution of the proceeds of the new grants was for each *geographical* county to receive—

(1) The probate duties—in proportion to the shares received out of the discontinued grants for the financial year 1887-8.

(2) The licence duties—the amount collected in the geographical county.

Under the provisions of the Local Government Act, 1888, the county councils were given an administrative control over the local authorities in the county area. The borough councils, claiming rights under their charters, resented this proposal and, as a result, the larger boroughs were exempted from this control. The Third Schedule to the Act of 1888 contains a list of sixty-one boroughs which were created county boroughs and exempted from county control, and made subject to all the powers, duties and liabilities of county councils. It was also provided that upon attaining a population of 50,000 (now 100,000) a borough would qualify to apply for county borough status.

It was necessary to allocate the proceeds of the assigned revenues for the geographical county between the county council and the county borough councils in the county (if any). This was accomplished by requiring (under Sect. 32) for an equitable adjustment to be made by agreement within twelve months after the 1st April, 1889, and in default of agreement, by Commissioners appointed for the purpose under the Act. (The Derby Commission.) The Commissioners were required to make an adjustment for practically every county and, as they were unable to complete their work during the twelve months prescribed by the Act, their powers were continued under the Expiring Laws Continuance Act, 1890. The Commissioners made

a general report in which they explained the principles upon which they had proceeded. The Commissioners determined that an equitable adjustment of the distribution of the proceeds of the local taxation licences and probate duty grant between each county and county borough would be effected by giving to the several authorities in each year, in the first place, the annual amount received prior to the passing of the Act of 1888 out of the grants discontinued by that Act (together with the new union officers' grant) and dividing the remainder in proportion to the rateable values of the county and county boroughs in each geographical county.

The Act provided, further, that at any time after the end of five years from the date of an agreement or award, if any county or county borough could satisfy the Local Government Board (now Minister of Health) that the adjustment has become inequitable and the councils concerned were unable to agree upon a new adjustment, the Board (Minister of Health) should appoint an arbitrator to make a new adjustment as if he were the Commissioners. (Sect. 32.)

County and county borough councils were required to pay the amounts received into an Exchequer Contribution Account and disburse those receipts as directed by the Act (Sect. 23). The basis of disbursement, stated briefly, was to ensure that the receipts should be devoted to paying (1) the costs incurred in administering the Account; (2) almost all the amounts previously met out of the discontinued grants, and equivalent to the payments made for the year 1887-8; (3) the new grant for union officers salaries; and (4) one-half the cost of Revising Barristers Courts and the cost of Election Petitions as provided by the County Electors Act, 1888. These primary payments became known as the "priorities." The funds had to be applied in the order mentioned. Any balance was to be applied to general county purposes.

No provision was made with regard to the discontinued grants for roads and criminal prosecutions and these were not originally included in the priority payments. The Act provided that the cost of maintenance of main roads should be wholly the liability of the county and county borough councils, and that the County Treasurer should pay the costs of prosecutions.

The Derby Commission took the view that half the cost of main roads should be the first charge upon any surplus after payment of the priority payments. The Devonshire Committee (1911) took the same view and effect was given to the principle for all subsequent adjustments by the Local Government (Adjustments) Act, 1913.

Upon every alteration of the boundaries of a county or county borough or the creation of a new county borough, although the aggregate priorities remained the same, a re-allocation of the priorities between the authorities affected by the changes became necessary.

### CHANGES SUBSEQUENT TO 1888

The Customs and Inland Revenue Act, 1890, increased the duties on beer and spirits. It was provided by the Local Taxation (Customs and Excise) Act, 1890, that the additional revenue should be treated in the same manner as the death duty grant, i.e. that 80 per cent of that increased revenue should be paid into the Local Taxation Account and divided between the geographical counties upon the basis of the proportions of the discontinued grants. Prior to this distribution, however, the sum of £300,000 each year was to be paid to police authorities in aid of the payment of police superannuation which had become an obligation upon them under the Police Act, 1890. The police authorities received a sum equal to the rateable deductions from police pay during the preceding year and the residue in proportion to their pension, etc., payments.

Previously, only elementary education could be legally provided out of public funds, but permissive power was given to devote all or part of the proceeds of the new duties to technical education. The grants became known as the "Whisky money," and much ridicule was made of the fact that the more men drank the better children could be educated. Under the Education Act, 1902, the money received from this source was made definitely applicable to higher education only.

The assigned revenues system never gave any satisfaction either to the central or local authorities. Certain of the proposed revenues failed to receive Parliamentary sanction, and it was always felt that this was revenue lost to the local authorities. These were the proposed wheel and horse taxes which had been estimated to produce £800,000 per year. The licence duties and the probate duty grant produced nearly £5,000,000 for the first year of the scheme and this provided a surplus of almost £2,000,000 in relief of local taxation. In the following year (1890-91) the customs and excise raised the money passing through the Local Taxation Account to £6,000,000.

By 1908 the surplus had turned into a deficiency. In some areas the receipts were insufficient to meet the liabilities for priority payments. The union officers salaries grant had to be paid in full out of the county and county borough fund if necessary by reason of any deficiency on the Exchequer Contribution Account.

The assigned revenues certainly expanded but not in the same proportion as local expenditure on grant-aided services. Inequalities and anomalies sprung up as the passing of the years made the original basis obsolete. Parliament also started a system of stereotyping the proceeds of the revenues to be devoted to local authorities and to deplete the amounts available by diverting funds to external purposes.

In 1894 probate duties were abolished, but this did not affect the Local Taxation Account as it was provided that a corresponding amount should be paid into the Account in substitution therefor out of the proceeds of the new estate duties on personalty levied under Sect. 19 of the Finance Act, 1894.

The Diseases of Animals Act, 1894, provided that any cost of administering the Cattle Pleuro-pneumonia Account set up by that Act, in excess of £140,000 in any year, should be appropriated from the proceeds of the estate duty grant before payment to the Local Taxation Account. This caused the deduction of a variable sum each year except for 1902-3, the maximum deduction being £842,103 in 1923-24.

Owners of agricultural land, as defined by the Act, were relieved of one-half of their poor rates thereon by the Agricultural Rates Act, 1896. It was provided that the local authorities should be compensated by grants out of the Local Taxation Account. The amount paid into the Account therefor was the amount of the loss for the year ending the 31st March, 1896, and notwithstanding the large increases in rate poundages since that date, no provision was made for a revision of the 1896 figure. Some authorities received a larger grant than they were required to allow subsequently to farmers, but, generally, the allowances greatly exceeded the grant. The Act was introduced in the nature of an experiment for a period of five years but was subsequently extended under the Expiring Laws Continuance Acts until repealed by the Local Government Act, 1929. The amount of the deficiency in 1896 was £1,332,873 and remained practically stationary, being £1,317,710 for the year 1928-29, the local authorities being compensated upon the latter figure.

The Tithe Rent-charge (Rates) Act, 1899, Sect. 1, relieved the owners of tithe rent charges attached to benefices of one-half of the poor rates thereon and provided that the loss to local authorities each year should be provided out of the estate duties payable to the Local Taxation Account. The Local Taxation Account was depleted by an amount of £105,687 in 1900-1 which grew to £372,897 in 1928-29.

Income was lost to local authorities owing to the extinguishing of licences under the provisions of the Licensing Act, 1904. On



the other hand the Act provided for local authorities to receive the monopoly values of new licences taken out within their areas, but this benefit was short lived, as the Finance (1909-10) Act, 1910, swept the monopoly values into the Exchequer.

The Finance Act, 1907, Sect. 17, provided that the assigned revenues should no longer be paid directly into the Local Taxation Account but should go to the Exchequer and in lieu thereof a sum equal to the amount which would otherwise have been paid into the Account should be charged on the Consolidated Fund and paid into the Local Taxation Account. From this date the principle of "assigned revenues" was practically abandoned and the way was prepared for any increase in the yield of these revenues to be diverted from the local authorities to the Exchequer. Subsec. (3) of Sect. 17 further provided that where any sum payable into the Local Taxation Account depended upon the proceeds of the duties on local taxation licences, those proceeds should be calculated, in the event of any alteration in the rate of the duties, as if duties were at the rate in force at the commencement of the Act, and if, in any year, consequent on any increase in the rate of duty, the proceeds of the duties as so calculated were less than the average proceeds for the three years ending the 31st March, 1907, the proceeds should be deemed to be those average proceeds. Thus the increase was secured to the Exchequer, but local authorities were guaranteed the average proceeds and still stood to gain by any increase in the *number* of licences issued. No finality was reached, however, as will be observed from what follows.

The Finance Act, 1908, made local authorities responsible for the levy of certain of these licences the proceeds of which no longer passed through the Local Taxation Account. This will be considered in detail later.

The Finance (1909-10) Act, 1910, made drastic changes with regard to the majority of the remaining licence duties passing through the Account in order to meet the increase in the scales of duties payable. Under Sect. 88 (1) the amount payable to the Account in respect of duties on liquor licences was stereotyped at the amount of the proceeds therefor for the year 1908-9. Sect. 47 (2) of the Act provided, however, that any capital sums paid for monopoly values should be deducted from this fixed amount before payment into the Local Taxation Account. The figure for 1908-9 was £1,806,541 and the variable sums deducted for monopoly values approximated on an average to £2,000 per year. No provision was made to compensate local authorities for loss of rates due to the reduction of the assessable values of licensed premises as a result of the operation of this Act.



Sect. 88 (2) of the same Act dealt in a similar manner with duties on motor-cars. The method of charging these duties was changed by the Act resulting in a considerable increase in the proceeds. The amount payable into the Local Taxation Account was fixed at the amount collected during 1908-09. Sect. 18 of the Revenue Act, 1911, extended this provision to the remaining carriage licences (that is, for other than motor-cars) and provided that the fixed grant should not pass through the Local Taxation Account. From 1910-11 a fixed grant of £536,954 was paid direct to the local authorities affected until another change was made by the Roads Act, 1920. The Revenue Act, 1911, Sect. 17 (1) stereotyped the amount of the customs and excise duties at the amount of the proceeds for 1908-9, viz. £1,107,260, and this sum was paid into the Local Taxation Account for this purpose until it was wound up in 1930. This deprived the local authorities of any increased yield from the "Whisky money." It also removed the stigma previously referred to by making the revenue of the local authorities independent of the volume of consumption.

The Roads Act, 1920, Sects. 1 and 2, directed that from the 1st January, 1921, the proceeds of the duties on mechanically propelled vehicles and other carriages should be paid into the Exchequer and out of those proceeds the sum of £536,954 per year should be paid into the Local Taxation Account and distributed according to the amounts collected in 1908-9 in respect of carriage licences. As the amount now passed through the Local Taxation Account, it became part of the discontinued grants in 1930. No further alterations in the composition of the Local Taxation Account took place until it was wound up in 1930. The composition of the Account for the standard year 1928-29 will be found on page 679. The Finance (1909-10) Act, 1910, provided that one-half of the duties proposed to be levied on land values should be devoted in aid of local rates. These revenues, of course, never materialized.

#### LEVY OF LICENCES BY LOCAL AUTHORITIES

Sect. 20 (3) of the Local Government Act, 1888, made provision for the Crown by Order in Council on the recommendation of the Treasury to transfer the power to levy all or any of the local taxation licences to the county (and county borough) councils. The provision remained in abeyance until 1909 and the Inland Revenue Department continued to be responsible for the levy, collection, and recovery of the duties.

The Finance Act, 1908, Sect. 5, provided for the transfer, as from a date to be fixed by Order in Council, of the power to

levy certain duties to the county and county borough councils. The duties included in this section were licences for dealers in game, keeping dogs, killing game, keeping guns, carriages, armorial bearings and male servants. An Order in Council dated the 19th October, 1908, made the necessary transfer to take place from the 1st January, 1909. The subsequent history of the carriage licences has already been described.

It has been stated that the reason for this transfer was to release Excise Officers engaged thereon for work devolving upon them under the Old Age Pensions Act, 1908.

The duties remained payable as before at the various Post (Money Order) Offices, the Postmaster-General forwarding the proceeds periodically to the Treasurer of each county and county borough according to the amounts collected in the area. It was provided that the transfer should not affect any equitable adjustment respecting the distribution of the proceeds. One effect of this change was to restore to the local authorities the actual proceeds of the duties instead of the contribution from the Consolidated Fund as provided by the Finance Act, 1907. The destination of these licences was not altered by the Local Government Act, 1929. This is dealt with later.

A grant of £40,000 was provided by Sect. 6 of the Finance Act, 1908, towards the expenses of the local authorities in levying these duties, the money to be distributed in proportion to the proceeds of the duties collected in 1908. Sect. 62 of the Finance Act, 1921, increased this grant to £60,000. It was discontinued under the Local Government Act, 1929, although the local councils continue to be responsible for the levy of such of these duties as remain.

Male servants' licences were abolished by the Finance Act, 1937, and local authorities compensated by an adjustment of the Block Grant under the Local Government Act, 1929. Licences for armorial bearings were abolished under the Finance Act, 1944.

## EDUCATION GRANTS

As previously stated, education grants were unaffected by the Local Government Act, 1888, and the payment of direct grants continued. The unsatisfactory nature of the Merit Grant paid under Lowe's Code, by restricting the development of teaching higher subjects, led in 1886 to the appointment of the Cross Commission of inquiry which reported in 1888. This resulted in the introduction of a new code which consolidated former grants in a single block grant known as the "annual grant." Further assistance was provided to areas with small populations. With a view to making education free (or approximately so) the

Elementary Education Act, 1891, provided a "fee grant" of 10s. per scholar where fees were abolished or reduced by that amount. In 1892 the system of payment by results was entirely abolished. In 1893 a special grant was made for special schools provided for blind and deaf children, and in 1899 for defective and epileptic children. The Elementary Education Act, 1897, provided an increased aid grant for scholars in necessitous areas. The Voluntary Schools Act, 1897, substituted a larger aid grant of 5s. per scholar in voluntary schools and relieved those schools of the obligation to pay local rates. The Education Act, 1902, abolished the grant to necessitous school board areas and gave a new aid grant to voluntary schools. A new necessitous area grant was introduced in 1906 of three-fourths of the sum by which the net cost to the rates exceeded 1s. 6d. in the £. Under the Appropriation Act, 1907, a block grant of £100,000 was provided for grants in aid of building new council schools. For some years after the services for the provision of meals and medical inspection and treatment of scholars were introduced no State aid was supplied but, for those services, under Regulations of the Board of Education, in 1912-13 provision was made for grants of one-half the net expenditure. As an outcome of the recommendations of a Departmental Committee set up by the Chancellor of the Exchequer in 1911, provisions for the consolidation of existing grants were incorporated in the Finance Bill, 1914, but were withdrawn owing to the outbreak of war. Regulations of 1917 made a supplementary grant, based upon those recommendations, providing a minimum grant of 40 per cent of the recognized expenditure.

A complete reorganization of this complicated system was accomplished under the Education Act, 1918. The method of payment was left primarily to regulations issued by the Board of Education. Under these regulations existing grants for elementary education were abolished and a consolidated grant substituted therefor, payable according to the Fisher Formula which originated with the proposals of the Kempe Committee of 1914. Provision was made for a substantive grant with maximum and minimum limits and increased grants were provided for highly-rated areas. The maximum was the greater of two-thirds of the net expenditure and the excess of the net expenditure over a fixed rate (1s. in the £). If the substantive grant did not provide a sum equal to one-half the net expenditure a deficiency grant was made to bring the total grant up to one-half. Where the grant fell short of a certain prescribed amount (originally a rate of 2s. 3d.) a prescribed proportion (50 per cent) of the shortage was payable.

A grant to assist highly rated areas, known as the additional grant, was substituted for the former necessitous areas grant, consisting of a prescribed proportion of the amount by which the expenditure, after deducting the substantive grant, falls short of a prescribed amount, the prescribed proportions and amounts being adjusted periodically.

For higher education, whereas the existing grants were continued, a deficiency grant operated to bring the grants up to 50 per cent of the net approved expenditure, if necessary.

From the 1st April, 1921, the former separate grants for higher education were superseded by a consolidated grant of 50 per cent net approved expenditure.

In 1929 the grant percentage payable in respect of loan charges and expenditure incurred on reorganization and development was temporarily increased from 20 per cent to 50 per cent.

Under the provisions of the Local Authorities (Financial Provisions) Act, 1921, the Board of Education were empowered, until the 31st March, 1925, to limit any grants considered necessary in order to cause the total grants payable to fall within the amount provided by Parliament for the purpose. In this manner some of the grants for individual services (e.g. School Meals) became block grants.

Orders in Council issued under the Economy Act, 1931, altered the factors in the Fisher Formula to meet the changes involved by the 10 per cent economy "cut" in teachers' salaries and abolished the deficiency grant for elementary education. The increased grant for reorganization and development grant was withdrawn. The Budget of 1934 restored a moiety of the cut and the Budget of 1935 the other half. Adjustments of the formula factors were made to meet these changes.

The factors in the Fisher Formula at the outbreak of the War in September, 1939, were—

36s. for each child in average attendance.

60 per cent net expenditure on teachers' salaries.

40 per cent net expenditure in respect of conveyance of school children.

50 per cent net expenditure on special services, viz. School Medical Service, Provision of Meals, Schools for Blind, Deaf, Defective and Epileptic Children, Physical Training, Play Centres, Nursery Schools, Maintenance Allowances, Reorganization and Development between 1/9/1929 and 5/9/1931, and between 1/1/1936 and 31/12/1943.

20 per cent remaining net expenditure.

Less product of a rate of 7d. in the £.

Prior to 1930, if after crediting the formula grant a rate burden exceeding the produce of a rate of 3s. 4d. in the £ remained to be provided, a highly rated area (additional fixed) grant of one-half of the excess was paid. The derating provisions of the Local

Government Act, 1929, made this basis unworkable, and in lieu thereof it was provided that local authorities who received such 1929-30 grant increased by 20 per cent. This basis was continued, except that in 1932-3 the 20 per cent increase was withdrawn and the product of a sevenpenny rate for 1935-6 added and the product of a sevenpenny rate for the current year deducted.

A new feature of the 1932 Regulations was the introduction of an additional formula grant payable where the product of a rate of 7d. falls short of a prescribed basic sum. The prescribed sum was found by multiplying 3d. by each unit of average attendance and multiplying the product by the number by which the average attendance per thousand of the population (to the nearest integer) exceeded 100. The grant was one-half of the shortage and was only earned where rateable value was low and the proportion of scholars high in relation to population.

The Minister of Labour provides a grant of 75 per cent of the net recognized expenses of a local education authority undertaking additional duties under an approved scheme for the establishment and maintenance of Juvenile Unemployment Centres. Grants for buildings will be limited to the period during which they are used as centres.

In Circular 1450 (20th October, 1936) the Board agreed to recognize expenditure on clothes and footwear for physical training for grant purposes.

With the outbreak of war on 3rd September, 1939, the Board of Education decided to simplify its grant system. The Elementary Grant Provisional Regulations, 1939, provided that the grant payable for any year would bear the same proportion to the net recognized expenditure for that year as the grant for 1937-38 bore to the net recognized expenditure for that year.

From the 1st July, 1940, increased grants were provided in respect of the provision of free meals. Since 1st April, 1945, the percentage grant has been increased by 25 per cent, with a minimum of 50 per cent. The result was to make education grants vary between 30 per cent and 65 per cent (highest).

From the 30th September, 1941, this percentage was increased to 30 per cent more than the standard percentage, making a minimum of 70 per cent and a maximum of 95 per cent.

The whole cost of provision of milk in all grant-aided primary and secondary schools is being borne by the Exchequer. (Circular 96-1946).

From the 1st January, 1942, a grant of 3d. per meal in voluntary secondary schools was made.

From the 1st May, 1943, the Government undertook to meet the whole cost of the capital for providing school canteens. From

1st April, 1947, the grant in aid of school dinners will meet the cost apart from a reasonable net cost per meal fixed annually by the Minister for the area. Expenditure on other meals will rank for grant.

In addition to the main grant the whole cost of the emergency training of teachers is borne out of State Funds as is also the entire cost of the construction and equipment of air raid shelters which were made available for the public when not required by scholars—other air raid precautions expenditure only ranked for grants at 50 per cent.

The additional grant for poor areas is now based on the two factors of low rateable value and sparsity of population. The former consists of 6s. per scholar in average attendance for every penny by which the local education rate exceeds 3s. in the £. The latter is 2s. per scholar in average attendance for every unit or part of a unit by which the number of children per mile of road falls short of fifteen. Two limits are placed on the amount which may be paid under both headings. The first restricts the grant to the amount produced by deducting a local rate of 3s. 9d. from the net approved expenditure reduced by the main grant. The main and additional grant together must not exceed 75 per cent of the net approved expenditure, or leave a charge less than a rate of 4s. 6d.

**Agricultural Education.** The Minister of Agriculture and Fisheries is authorized to make grants in aid of agricultural subjects. Capital grants may be paid at the rate of 75 per cent and grants in aid of annual expenditure at  $66\frac{2}{3}$  per cent.

**Museums and Art Galleries.** The Minister of Education may make grants of one-half the cost of acquisition of works of art and similar objects. Grants are not made normally where the cost of an item is less than £10.

Education grants were not discontinued under the provision of the Local Government Act, 1929.

## THE REVIVAL OF DIRECT GRANTS

**Inebriates Homes.** Under the provisions of the Inebriates Act, 1898, the Treasury may contribute out of money provided by Parliament such sums and under such conditions as the Secretary of State recommends towards the expenses of persons detained in certified inebriates reformatories. County and county borough councils are authorized to establish these institutions. The grants are paid under Home Office Regulations. The normal grant was 16s. per inmate per week, but for inmates who had been convicted four times the amount was reduced to 10s. 6d.

**Probation of Offenders.** With the approval of the Treasury

the Home Office makes a grant to the local authorities paying the expenses of the justices for the petty sessional divisions under the Probation of Offenders Act, 1907, as amended by Part I of the Criminal Justice Act, 1925. The local authorities are the county borough council, or the borough council in boroughs with a separate commission of the peace, and elsewhere the county council. The grant is 100 per cent of training expenses and not less than  $47\frac{1}{2}$  per cent of other expenses.

**Small Holdings and Allotments.** The Small Holdings and Allotments Act, 1908, authorized the Board (now Minister) of Agriculture and Fisheries to give financial assistance to county and county borough councils in the execution of their functions in relation to small holdings. A Treasury Minute (19th October, 1908) stated that the grant would be in respect of any loss sustained through the execution of a small holding scheme, any expenses incurred in the acquisition of land and one-half the cost of ascertaining the demand for small holdings, providing the council acted reasonably and with due precaution.

With a view to discharging the liability of the State in relation to these schemes the Land Settlement (Facilities) Act, 1919, provided for a capital valuation of all small holdings at the 31st March, 1926, and provided that from that date the grant would be the amount by which the outstanding capital liabilities in respect of the acquisition and adaptation of land exceeded the capital valuation then made. Realizing that alterations of interest rates would seriously affect the operation of schemes under such an arrangement, the Land Settlement (Facilities) Act, 1925, provided that the grants should be based upon an *annual* valuation of assets and liabilities and the Small Holdings and Allotments Act, 1926, Sect. 4, provided that the grant in respect of holdings acquired after the 31st March, 1926, would be an amount not exceeding 75 per cent of the estimated annual capital loss in lieu of the total loss.

**Metropolitan Police.** A special Treasury grant of £100,000 for imperial services rendered by the Metropolitan Police was provided under the Police Act, 1909, for the local authorities comprised in the Metropolitan Police District. The salaries of the Commissioner, two Assistant Commissioners and the receiver of Metropolitan Police are also borne on national funds.

**Development of Economic Resources.** Under the Development and Road Improvement Funds Act, 1909, a Development Commission of five persons was appointed and, on their recommendation, the Treasury were authorized to make grants to public authorities for afforestation, agriculture and rural industries, reclamation and drainage of land, constructing light



railways, construction and improvement of harbours and inland navigation, and the development and improvement of fisheries.

Some of these grants are charged on the vote of the Ministry of Agriculture and Fisheries, and some provided out of the fund of £850,000 established under the Corn Production (Repeal) Act, 1921, and others from the Development Fund. In 1919, forestry functions were transferred to the Forestry Commission and transport functions to the Minister of Transport.

An example of the utility of these powers is seen in the advance of 75 per cent of the loss on the Bedford rural area electricity scheme made by the Treasury.

**Afforestation Schemes.** As already mentioned, the promotion of schemes of afforestation was one of the functions which the Development Commissioners were authorized to assist under the Development and Road Improvement Fund Act, 1909. In some cases special agreements were entered into with local authorities whereby in return for advances the Commissioners became entitled to a proportion (e.g. one-half) of the future receipts from the Schemes. The Forestry Act, 1919, established a Forestry Commission and the duty of promoting the interests of forestry and the development of afforestation was transferred thereto. The Commission were empowered to make advances by grant or loan to persons (including local authorities) for afforestation and re-planting schemes. The grants are paid at a rate not exceeding £4 per acre planted according to the nature of the work undertaken. (See Cmd. 3157: 1928.) The provision of the Act of 1909, which made these grants repayable out of any profits made, was repealed by the Forestry Act, 1923.

**Road Grants.** The position with reference to highways, which was the outcome of the financial settlement of 1888, continued without modification until the Development and Road Improvement Funds Act, 1909, made provision for an extension of the road grant system. Part II of the Act provided for the constitution of a Road Board with power to construct and maintain roads and make advances either by grants or loans, or both, to highway authorities, for the construction of new roads and the maintenance, repair or improvement of existing roads. The proceeds of the newly imposed motor spirit duties and part of the motor car licence duties were directed to be paid into a Road Improvement Fund, out of which the Road Board were empowered to make grants and loans to highway authorities for the construction of new roads and the improvement of existing roads. Following the outbreak of hostilities in 1914, the proceeds of these revenues were diverted from the Road Improvement Fund to the Exchequer. Under the provisions of the Ministry of



Transport Act, 1919, the Road Board was abolished and a Roads Advisory Committee set up for consultation with the Minister.

With a view to securing the appointment of a better qualified type of road officer, Sect. 17 (2) of the Act of 1919 authorized the Minister to refund to highway authorities one-half the salary and travelling expenses only of their road officer where the appointment, retention and dismissal of such officer and the amount of such charges are subject to his approval. In Circular 388 (Roads), dated the 13th November, 1933, the Minister of Transport issued revised conditions under which the grant in respect of expenses would be paid.

The Ministry of Transport made a classification of all highways in the country. They were graded into Class I and Class II roads. Roads of minor importance were "scheduled" as district roads.

THE ROADS ACT, 1920, established the Road Fund and made county and county borough councils responsible for the licensing and registration of mechanically propelled road vehicles. The revenue is paid into a Motor Tax Account, which is a national account. The Exchequer now pays the whole cost of administration. The Road Fund is financed out of money provided by Parliament. Out of the Road Fund the Minister is authorized to make grants to highway authorities. The original basis of distribution was for Class I roads and bridges to receive 50 per cent and Class II roads and bridges 25 per cent. These percentages were increased later to 75 per cent and 60 per cent respectively, and Class III roads were admitted for grants in 1946 at 50 per cent. A grant is made to local authorities to compensate them for the loss of fees and charges previously received for licensing mechanically propelled hackney carriages.

THE ROAD IMPROVEMENT ACT, 1925, enlarged the scope of road expenditure qualifying for grants; for example, the cost of planting trees on highways was admitted for the first time.

THE LOCAL GOVERNMENT ACT, 1929, discontinued the maintenance grants for classified roads and bridges in London and county boroughs and the maintenance grants for unclassified roads in counties. Road Fund grants are still payable to county and county boroughs for new constructions and major improvements (including traffic signals) in cases approved by the Minister of Transport. County Councils continue to receive percentage grants for maintenance of their classified roads and improvements of their unclassified roads.

The administration of the Road Fund received considerable criticism by reason of the "raids" which were made upon it and which have been regarded by many road users as a breach of the purposes for which it was established. In 1927 a sum

of £7,000,000 was transferred to the Exchequer and one-third of the annual proceeds equivalent to £5,000,000 per annum earmarked for transfer to the Exchequer as representing the taxation of "luxury" expenditure as contrasted with road taxation. In 1928 a further sum of £12,000,000 was transferred to the Exchequer. In April, 1935, the Chancellor appropriated for his Budget the Road Fund balance of £4,470,000.

THE FINANCE ACT, 1936, provided for the moneys previously paid in to the Road Fund to be paid to the Exchequer and for the Road Fund to be financed out of money provided by Parliament, thus giving Parliament annual control over the amount of the expenditure out of the Fund. Certain grants which were a statutory charge on the Fund are also made out of Parliamentary grants, including the expenses of local authorities in levying motor taxation duties and the amounts paid to local and police authorities in substitution for hackney carriage licences. The amount previously paid towards the General Exchequer Contribution for block grant purposes has been discontinued.

The Road Traffic Act, 1930, provides that advances may be made out of the Road Fund towards the costs incurred by the council of an urban district in connection with the execution of the following works in a county road, viz.—

(1) the erection, lighting, maintenance, alteration and removal of places of refuge in roads; and

(2) the construction, lighting, maintenance, alteration and removal of subways under roads for the use of foot passengers. (Sect. 57.)

On the 22nd January, 1934, the Minister of Transport sent Circular 391 (Roads) to highway authorities intimating that he had decided to revert to his practice prior to October, 1931, with reference to grant payments towards the improvement and construction of roads and bridges. Grants are accordingly based on disbursements actually made plus the estimated disbursements during the next three calendar months. Previously only one month's disbursements had been included. Under existing arrangements 90 per cent of the total grants are paid on account on the basis of estimates and the balance upon submission of final accounts. Grants of 75 per cent are made towards the freeing of privately owned toll bridges taken over by local authorities. Towards the cost of freeing roads from toll charges the Minister pays—

60 per cent in the case of Class I roads; and

50 per cent in the case of Class II roads.

For expenditure on the reconstruction of weak private bridges

on classified roads by local authorities a grant of 75 per cent is payable. The Minister issued Circular 408 (Roads) on the 12th November, 1934, extending to portable weighing machines the grant from the Road Fund for weighbridges intimated in Circular 372 (Roads) 7th January, 1932. This grant encourages local authorities to prevent damage to highways by the overloading of road vehicles and trailers. The grant is 25 per cent of the expenditure on the provision and erection of new weighbridges or 50 per cent of the approved expenditure on the use of weighbridges of other local authorities or persons or the maintenance of a weighbridge of the authority itself. For portable weighbridge used by county councils only, the grant is increased to 60 per cent.

Towards installing and maintaining traffic light signals the grant is 60 per cent. In Circular 416 (1935) the Minister indicated that grants from the Road Fund toward approved expenditure by local authorities, other than the Corporation of London, metropolitan boroughs and county boroughs, on the provision, erection, maintenance and lighting of speed limit signs, would be made at the rate of 60 per cent. In Circular 419 (1935) highway authorities were invited to submit to the Minister immediately particulars of schemes of major improvements which they were prepared to put in hand without delay and a programme of improvements proposed to be undertaken over the next five years with a view to notifying such authorities which schemes would be recognized for grants. In Circular 420 (1935) the Minister intimated that grants at 60 per cent would be made to county and county borough councils in respect of pedestrian crossing-places and speed limit signs constructed within a stated time.

In July, 1935, the Minister of Transport announced that he was prepared to give grants in excess of the normal, not only for the improvement of trunk roads and bridges, but also, where circumstances warrant, for the provision of dual carriageways and cycle tracks. For trunk roads and bridges, the flat rate of 60 per cent may be increased from 75 to 85 per cent, and for dual carriageways and cycle tracks from 60 to 75 per cent. The provision of footways in all cases where they are practical and desirable is a condition for Road Fund Grants and such Grants are withdrawn where widening schemes deprive pedestrians of footways or verges.

The differentiation should be observed in the treatment of bridges carrying railways, etc., over roads and bridges over railways, canals, etc. Maintenance of the bridge structure may not be the responsibility of the highway authority in the former

case although the road under such bridges is their responsibility. In case of road construction the bridge owner may require, as a consent to reconstruction of the bridge, to be paid compensation for increased future maintenance. Such compensation is treated as part of the capital cost of the road improvement for grant purpose. Payments in respect of overline bridges on classified county roads are properly chargeable to the classification and treated as part of the cost of maintaining the grant road.

Other expenditure accepted as grant earning includes—

Acquisition of property for road works including legal charges.

Compensation in respect of building and improvement lines.

Sterilization of land for widening classified roads.

Approved additional staff expenditure.

Planting of trees on highways.

One practical difficulty which road authorities have to face is the practice of the Minister of Transport to admit expenditure for grant only at the District Valuer's Valuation. This is frequently less than the actual cost of acquisition.

In 1936 the Minister changed the basis of grants in respect of works of major improvement and the construction of new roads and bridges in built-up areas by allowing 50 per cent of the cost of road works, *including land and buildings* in the case of Class I roads, and 33½ per cent in other cases. The cost of land and buildings is assessed by the district valuer and includes compensation for disturbance, any necessary re-housing, less any recoupment value.

In respect of special improvements for roads with dual carriageways and cycle tracks, the grants vary according to groups into which the county or county borough falls. Three groups have been based upon the needs of local authorities as determined by their weighted populations for block grant purposes as follows:

Group	Special Improvements	
	Areas not Built up	Built-up Areas
A—high needs .	% 75	% 66½
B—medium needs .	66½	60
C—low needs .	60	50

In built-up areas the grants are based on the net cost of land and buildings instead of their site value, and the rates of grants are scaled down accordingly.

The expenses of the London Traffic Committee, the Traffic Commissioners and Appeal Tribunal are also paid out of the Road Fund.

Under the Restriction of Ribbon Development Act, 1935, Sect. 1, grants will be paid towards expenditure on compensation arising out of the adoption of standard widths.

Towards the provision of snow ploughs the Minister contributes 50 per cent.

The Trunk Roads Act, 1936, enables the Minister to provide a grant of 50 per cent of the capital and maintenance cost of new or improved lighting on trunk roads.

GRANTS MADE OUT OF ROAD FUND IN GREAT BRITAIN are in respect of—

(1) Maintenance and minor improvement of classified roads and bridges in counties.

(2) Special maintenance grants in counties where the burden of highway expenditure is exceptionally heavy, up to 75 per cent.

(3) Expedited unemployment schemes.

(4) Improvements and new construction.

(5) Trunk road lighting.

(6) Surveyors' salaries and administration.

(7) London cross river traffic.

(8) Traffic control light signals.

(9) Weighbridges.

(10) Pedestrian crossing places.

(11) Speed limit signs.

(12) Traffic census.

(13) Police motor patrols.

(14) Other Traffic Regulations Grants.

**Mental Deficiency.** A grant in aid of the expenses of local authorities on mental treatment was authorized by the Mental Deficiency Act, 1913. The total annual amount was limited to £150,000 but this limit was removed by the Mental Deficiency and Lunacy (Amendment) Act, 1919, Sect. 1. The grant was originally administered by the Secretary of State (Home Office) under Treasury approval, but with the transfer of the Board of Control to the Ministry of Health in 1920, the administration was transferred to the Minister. The local authorities are county and county borough councils, acting through a Committee for the Care of the Mentally Defective. A limit of a rate of two-thirds of a *rd.* in the *£* is placed upon expenses of services which are not obligatory under the Act. Payment of the grant on a percentage

basis was not statutory but the regulations provided for a grant of 50 per cent of the approved net expenditure in respect of obligatory duties with further sums for defectives sent to certified institutions by order of court or from State institutions and the full cost of treatment of ex-service men whose condition is not caused or aggravated by war service. The percentage grants were discontinued under the Local Government Act, 1929.

**Tuberculosis.** The National Insurance Act, 1911, Sect. 64, foreshadowed a State grant towards the provision of sanatoria and other institutions for the treatment of tuberculosis by enacting that if any other Act of the same session made available any sum for such purpose it should be apportioned in proportion to the respective populations of England, Wales, Scotland and Ireland. The Finance Act, 1911, Sect. 16 (1) (b), provided £1,500,000 for this purpose. On the 7th November, 1913, the Local Government Board issued a Memorandum on the Treatment of Tuberculosis in which it was intimated that the grant would be 50 per cent of the net cost of sanatoria schemes, subject to expenditure being kept within reasonable bounds. Arrangements commenced generally with the financial year 1914-15.

Under the provisions of the National Insurance Act, 1920, the payment of sanatorium benefits under the National Insurance Acts ceased. The Public Health (Tuberculosis) Act, 1921, made county and county borough councils responsible for the treatment of tuberculosis. The Minister of Health undertook that local authorities should not lose thereby and a block grant was provided based upon the amount previously received from national insurance funds. Grants for the treatment of tuberculosis were discontinued under the Local Government Act, 1929. In 1943, the Ministry of Health issued Memorandum 266T setting out the scheme for the payment of maintenance allowance to persons who have to give up remunerative work in order to take treatment for pulmonary tuberculosis. The allowances are paid by county and county borough councils and repaid by the Minister. The cost of administration falls on local funds.

**Maternity and Child Welfare.** On the 30th July, 1914, the Local Government Board directed a circular to county councils and sanitary authorities intimating that Parliamentary sanction would be sought to secure a grant to stimulate more extended and systematic action in work of maternity and child welfare and the local authorities were invited to submit schemes.

The Notification of Births (Extension) Act, 1915, made compulsory and universal the voluntary system of early notification of births established under the Notification of Births Act, 1907. A further circular of the 29th July, 1915, stated that the

Government had agreed to provide annual grants of one-half the cost of the whole or any part of approved maternity and child welfare schemes. Regulations under which the grants were payable were issued dated the 23rd September, 1916. The scope of this service was enlarged by the Maternity and Child Welfare Act, 1918, and new Regulations were issued dated the 9th August, 1918. A further extension of the grant aided service under these Regulations was occasioned by the issue of the Ophthalmia Neonotorum Regulations dated the 31st July, 1926, and the Puerperal Fever and Puerperal Pyrexia Regulations of the same date. Except for the training of midwives and health visitors, grants for maternity and child welfare were discontinued under the Local Government Act, 1929.

Under the Midwives Act, 1936, the Minister of Health will make a direct grant of 50 per cent of the cost of the compensation of midwives retiring or retired from service and the additional expenses under the Act over the expenditure for the year ending the 31st March, 1936. Each local authority will receive its share of the total grant scaled up or down according to its weighted population for the purposes of its block grant. Subsequently this grant will be merged in the block grants.

**Midwifery Training.** Under the Midwives Training Regulations, 1919, a grant was provided to encourage the training of midwives. This training was frequently left to the education authority. From the 1st April, 1925, grants were restricted to definite courses provided by recognized associations and institutions. The grant was originally £8 10s. per trainee, but is now £35 for a full course and £20 for a course of less than one year. For practising midwives attending approved courses, grants of £20 per midwife for a long course and £1 per week for a short course are payable.

**Training of Health Visitors.** The Minister of Health issued Memorandum No. 101 in 1925 explaining the conditions under which grants would be paid to institutions recognized by the Department for training health visitors. The grant is £20 per successful trainee.

**Welfare of the Blind.** Prior to the passing of the Blind Persons Act, 1920, apart from the relief of destitution, the welfare of blind persons remained in the hands of voluntary charitable agencies. This Act placed upon county and county borough councils the responsibility for satisfactory arrangements for blind welfare whether undertaken by voluntary agencies or promoted by the local authority. Ministry of Health grants were paid for the following purposes under conditions prescribed by Regulations issued in 1919—

Augmentation of Wages of Workshop Employees	£20 per year per person.
Augmentation of Earnings of Home Workers	£20 " "
Towards salaries of Home Teachers	£78 " "
Expenses of Homes for the Blind	£13 " "
Expenses of Hostels for the Blind	£5 " "
Book Production, 2s. 6d. per volume; Magazines, 2d. per copy.	

These grants were discontinued under the Local Government Act, 1929, and the amounts paid for 1928-29 were included in the loss of grants in the calculation of the new block grant. Local authorities are required to pay grants to Voluntary Institutions and Societies under a scheme drawn up by the Minister of Health. In other cases the Local Authority carries out the services directly.

**Venereal Diseases.** The Public Health (Venereal Diseases) Regulations, 1919, issued under the provisions of the Public Health (Prevention of Diseases) Act, 1913, provided a grant of 75 per cent of the approved net expenditure of county councils and county borough councils and boards of guardians on services for the prevention and treatment of venereal diseases. These grants were discontinued under the Local Government Act, 1929.

**Port Health.** The medical inspection of aliens at ports of immigration is carried out by port health authorities on behalf of the government and the whole cost is refunded to them. A grant of 50 per cent of other approved net expenditure is paid by the Minister of Health. This grant was not discontinued by the Local Government Act, 1929.

**Registration of Electors.** Under the provisions of the Representation of the Peoples Act, 1918, one-half of the expenses of the local authorities in the compilation, printing and revision of the register of electors is met by government grants. The expenditure must not exceed the scales laid down in the Treasury Regulations framed on the 1st April, 1931, as amended. A national economy cut of 5 per cent was made to apply to the scales in respect of the Registers for 1932 and 1933, but this was reduced to 2½ per cent for the 1934 Register and from 1935 the full scale has been restored.

**Agricultural Organization.** The Minister of Agriculture and Fisheries refunds the whole cost of the administration of agricultural committees set up under Part III of the Ministry of Agriculture and Fisheries Act, 1919. The appointment of these committees is obligatory on county councils but optional on county borough councils.

**Police.** Under Sect. 8 of the Police Act, 1919, the amount of the transfer from the Exchequer Contribution Account of one-half the pay and clothing was stereotyped at the amount paid



or transferred in respect of the year ended 31st March, 1915. A new grant of one-half the net approved expenditure of police authorities was introduced and the half pay and clothing grant merely reduced the amount of the new substantive grant until it ceased to be transferred under the provisions of the Local Government Act, 1929, and became merged in the substantive grant. There is no statutory authority for the payment of the 50 per cent grant for police apart from the annual votes made in Committee of Supply.

Under Sect. 57 (4) of the Road Traffic Act, 1930, a grant is made from the Road Fund towards the cost of providing and maintaining motor patrols for the supervision of traffic on roads and the detection of traffic offences. The grant is intended to facilitate the employment of police exclusively on this work and to secure a systematic patrol on all main roads. The grants, subject to an additional allowance of £2 for every 1,000 miles more and a deduction of £5 for each 1,000 less than 13,000 miles per year are—

(a) Motor bicycle . . . .	£6 per annum.
(b) Motor combination . . . .	£80 „
(c) Motor-car, 10/12 h.p. . . .	£120 „
(d) Motor-car, over 12 h.p. . . .	£150 „

In order to release police officers for their normal duties the Home Office have intimated that grants will not be paid in respect of police engaged on point duty where automatic traffic signals can be installed, unless it can be shown that the employment of a constable is essential.

**Housing.** Prior to 1919 the cost of providing housing accommodation by local authorities was entirely a local charge. The Housing and Town Planning Act, 1919, was an exceptional measure for hastening the provision of the banked up demand for houses due to the shortage in building during the war. Under this Act the State entered into a housing partnership with local authorities and undertook to meet the cost in excess of a local rate of 1d. in the £. The grant was limited to the cost of houses included in approved tenders on the 14th July, 1921. Re-housing schemes were eligible in addition to the provision of new accommodation.

As the provision of houses for the working classes almost ceased with the withdrawal of the grant, the Housing Act, 1923, was passed to provide a subsidy to encourage private enterprise to build the necessary houses. The local authority was authorized to pay a subsidy to builders and the government provided a grant of £6 per house per annum for 20 years. This was reduced

to £4 for houses built after the 1st October, 1927, and was withdrawn in respect of houses not completed by the 1st October, 1929. This Act also provided a grant of 50 per cent of the net deficiency of the local authority on re-housing schemes, but this was displaced by the grant provided by the Housing Act, 1930, from the 1st August, 1930.

The Housing Act, 1924, provided a grant of £9 per annum for forty years in respect of houses built to let to working class tenants under approved conditions. In agricultural parishes an increased grant of £12 10s. was provided. For houses completed after the 1st October, 1927, the grant was reduced to £7 10s. per annum (agricultural parishes £11) and was finally withdrawn by the Housing (Financial Provisions) Act, 1933, unless the houses were in schemes submitted or substantially ready to be submitted to the Minister of Health before the 7th December, 1932, and completed by the 30th June, 1934.

The Housing (Rural Workers) Act, 1926, authorized the payment of grants in respect of expenses incurred in reconditioning cottages for agricultural labourers or persons of the same economic condition. The Act empowered the local authority to make a grant of not exceeding either two-thirds of the cost of the works or £100 per house and the Minister to make a grant equal to one-half the estimated loan charges which would have to be borne by the local authority if loans for twenty years were raised.

The grant could be paid in instalments as the work proceeded. The provision of assistance was extended to the abatement of overcrowding, but the total amount of the original and new grant in the case of an individual house had not to exceed £150. Originally passed for five years, the Act was extended by subsequent Acts, but has been allowed to lapse.

The Housing Act, 1930, provided a new type of grant in order to expedite the clearance of slums and insanitary houses. The grant was based upon the number of persons displaced and for whom alternative accommodation was made available. The normal grant was £2 5s. per person payable for forty years. In agricultural parishes the grant was £2 10s. per person. For rehousing in tenement dwellings of more than three stories, built on clearance areas or on costly sites exceeding £3,000 per acre, the grant was £3 10s. per person. No grant was payable where a local authority accepted an undertaking from an owner in lieu of demolition that the premises would not be used for human habitation.

In order to encourage the building of small houses for aged couples the Act of 1930 admitted houses of two-thirds the standard dimensions for grant at two-thirds the normal rate

under the 1924 Act, viz. £5 per annum for forty years. This grant was withdrawn under the Act of 1933.

The Housing (Financial Provisions) Act, 1933, withdrew the housing grants except those for rehousing. A new type of grant was introduced in order to facilitate private building by the aid of Building and Provident Society advances. The normal advance of these societies is limited to two-thirds of the valuation. To encourage the societies to make a larger advance it is provided that from the 25th April, 1933, where an increased grant is made, but not exceeding 90 per cent of the valuation, and the local authority agree to guarantee the society against any loss in respect of not more than two-thirds of the principal and interest due under the excess advance made, the Minister of Health may refund the local authority not more than one-half of any loss they sustain under the guarantee. The result is that the Exchequer, the local authority and the society bear any loss in respect of the excess advance in equal shares. The liability of the local authority diminishes *pro rata* with the repayments of principal and interest, and ceases when the principal outstanding is reduced to 45 per cent of the assessed value.

Under the provisions of the Housing Act, 1935, Exchequer contributions were provided as follows—

(a) In respect of accommodation provided to abate overcrowding or in carrying out a re-development plan—

(1) In blocks of flats of not less than three stories, on expensive sites, a contribution payable for forty years, upon a scale graduated according to the cost of the developed site, commencing at £6 a year per flat where such cost is between £1,500 and £4,000 per acre and increasing by £1 for each £1,000 increase in site costs up to £6,000 and thereafter by £1 for each £2,000 increase or part of £2,000. Building after 1st February, 1935, qualified for grant.

(2) In new houses or flats otherwise than on sites of high value a contribution not exceeding £5 per year for a period not exceeding twenty years, subject to the Minister's satisfaction that the expense incurred would otherwise impose an undue burden on the district.

(3) In houses for members of the agricultural population a contribution of not less than £2 or more than £8 payable annually for forty years.

(b) Accommodation rendered necessary by displacements from unfit houses in a re-development area qualified for grants equivalent to those payable under Sect. 26 of the Housing Act, 1930.

**Consolidation of Housing Subsidies.** The Housing Act, 1935, provided for the consolidation of most of the subsidies payable

under this and previous Acts. The grants affected are those payable under the following provisions—

<i>Act</i>	<i>Sect.</i>	<i>Act</i>	<i>Sect.</i>
1919	7	1926	4 as amended by
1923	1 (1) (b)	1935	35
1923	1 (3)	1930	26
1923	1 (1) (b) as amended by	1931	1
1924	1 and 2	1935	Part III.

Subsidies not affected are the lump sum subsidies payable to builders, subsidies payable to persons in receipt of rents, subsidies under the Rural Workers Act, 1926, except as stated above and subsidies in respect of guarantees to building societies under the 1933 Act.

Speaking generally, the respective liabilities of the Exchequer and the local authorities are fixed on the basis of the position existing at the passing of the Act and according to detailed rules contained in the Act.

The local authorities are freed from the special conditions hitherto attached to the payment of subsidies and general conditions are substituted. They are therefore released from obligations with regard to rents to be charged and are enabled to deal with the rents of all their houses in a uniform manner.

The Housing (Financial Provisions) Act, 1938, combined the grants formerly payable for slum clearance and overcrowding abatement. The unit per person basis was abandoned. The subsidy was £5 10s. per house. In non-county boroughs and urban districts where rents were comparatively low the Minister could increase the grant to £6 10s. For houses in rural districts for the abatement of overcrowding among the agricultural population the subsidy could be increased up to £10 per house. In districts where the cost of building is high the grant may be increased to £12. For flats on expensive sites a new scale was provided ranging from £11 per flat on a site costing £1,500 an acre to as much as £26 on the most expensive land. In each case the grant was for forty years.

The Housing (Temporary Provisions) Act, 1944, extended grants payable under the Act, 1938, until 1st October, 1947, for all new accommodation.

The grants under the 1938 Act were restricted to accommodation in respect of persons displaced from clearance areas and to abate overcrowding.

*The Housing and Town Planning Act, 1944*, extended the grant to accommodation provided for the persons rehoused from areas of extensive war damage and areas of bad lay-out and obsolete development.

*The Housing (Temporary Accommodation) Act, 1944*, made provision for the supply by the Ministry of Works of temporary bungalows towards which the local authority made a payment of £23 10s per annum for ten years. Under this arrangement it is estimated that a loss of £4 per bungalow will fall on local rates each year for ten years. Should the loss be greater, the Minister may pay 80 per cent of the additional loss and may give consideration to further assistance if the loss is more than £8, owing to exceptional circumstances.

*The Housing (Financial and Miscellaneous Provisions) Act, 1946*, made fresh arrangements for grants in respect of permanent new accommodation. Owing to the high cost of construction the Government provided grants in the ratio of three to one compared with rate contributions. The general standard grant is £16 10s per annum for 60 years. Houses for the agricultural population will receive an increased grant of £25 10s. This also applies to houses in areas with populations of low rent-paying capacity.

For blocks of flats on expensive sites the grants will be on a scale which starts at £28 10s. per flat per year where the cost is over £1,500 per acre. This also applies to mixed development of flats and cottages interspersed for planning purposes.

For flats of four stories or more in which lifts are provided an addition of £7 per flat is made. These grants are made retrospective to accommodation provided since the 3rd August, 1944. A review of the rate of grants was to begin in December, 1946.

**Unemployment Schemes.** On the 20th December, 1920, a Treasury Minute appointed an Unemployment Grants Committee under the Chairmanship of Viscount St. Davids to administer a fund provided out of Parliamentary Grants in order to assist local authorities in promoting schemes of work for the relief of unemployment by grant aid. The original grant was 30 per cent of the wages of additional workers employed. In January, 1921, this limit was increased to 60 per cent. With a view to accelerating works of public utility for the relief of unemployment a more generous scale of grants was provided from time to time. To receive assistance it had to be shown that the works were accelerated in order to provide immediate employment for unemployed workers. Works financed out of loans received a certain percentage of the loan charges, non-revenue producing schemes receiving a larger grant than others. In the case of revenue producing schemes a percentage of the interest charges only was paid. Works financed out of current revenues received a grant based upon the wages paid to unemployed men engaged for the works. The Committee on National Expenditure

strongly criticized the economic policy involved in these grants. As a result of the economy campaign of 1931 no further grants were made and the Committee was allowed to lapse.

**Land Drainage.** Grants for land drainage were not known before 1920. In that year the Minister of Agriculture and Fisheries was authorized to make grants for schemes of main drainage, with a view to the reduction of unemployment. The rate of grant was originally 70 per cent of the net cost, but was reduced later to 50 per cent of the cost, or 75 per cent of labour cost only. In 1926 the sum of £1,000,000 to be spread over five years was promised for the purpose of increasing productivity and the grants were fixed at 33½ per cent of the cost. In 1928 these grants were linked up with the unemployment policy and grants at 50 per cent were provided if labour transferred from distressed areas was employed. Under the Land Drainage Act, 1930, the Minister is authorized, with Treasury sanction, to assist Catchment Boards with grants for improvement of existing works or construction of new works of main drainage. No rate of grant is fixed by the Act.

**Agricultural Rates.** The Agricultural Rates Act, 1923, carried the derating of agricultural land a step further. The abatement of one-half made under the Act of 1896 was increased to three-fourths the poundage of other occupiers, but whereas the grant under the earlier Act was fixed according to the loss in the initial year, this Act provided a variable grant based upon the actual loss each year. These grants were discontinued under the Local Government Act, 1929, which totally derated agricultural land and buildings.

**Diseases of Animals.** The Diseases of Animals Act, 1925, authorized the Minister of Agriculture and Fisheries, under Treasury directions, to refund to local authorities 75 per cent of their gross expenses on compensation payable in respect of bovine animals slaughtered through showing signs of tuberculosis. No reduction need be made from these expenses in respect of income derived from the sale of carcasses.

**Goschen Loans.** The Local Authorities (Financial Provisions) Act, 1921, Sect. 3, as amended by the Local Authorities (Emergency Provisions) Acts, 1923 and 1928, authorized the Minister of Health to sanction the borrowing of money temporarily by bank overdrafts and otherwise to meet current expenditure. These loans were repayable normally within the financial year in which they were borrowed. Owing to exceptional expenditure due to distress the Minister was empowered to extend the period of payment until the 30th March, 1932.

At the time of the passing of the Local Government Act, 1929,

there were twenty-two Boards of Guardians, and their aggregate liability was approximately £6,000,000. This debt was transferred to county and county borough councils who had not been responsible for the liability in the first instance. In mitigation of this burden it was provided that in the case of any such loans raised before the 12th November, 1928 (the date of the introduction of the Act), no interest need be paid and a period of fifteen years was allowed for the repayment of the capital outstanding. Moreover, where the burden due to the repayment of the principal sum would otherwise exceed the produce of a rate of 9d. in the £, the instalment of principal was reduced to that amount. This is equivalent to a Government grant where relief is given from the original liability.

A proposal has been made on behalf of the authorities responsible for repayment of these loans that they should be merged in the block grant. This would mean that all local authorities would bear their weighted population proportions of these loans, notwithstanding that most of them met their obligations as they fell due.

**Children and Young Persons.** Prior to the 1st April, 1919, the grants made by the Treasury in aid of industrial and reformatory schools were paid on an unsatisfactory basis. They were variable and dependent upon the section of particular Acts under which the children were committed, their age, and the period of their detention. Such a system caused embarrassment to the school authorities. In 1919, the Home Office introduced a scheme by which the State and the local authorities would share the cost equally. The latter were required to pay a flat rate fixed annually by the Home Office for every child committed to a school. The Government grant was based on the actual cost of maintenance up to an amount approved by the Home Secretary. The flat rate was fixed to produce the desired result. As the average cost was about 24s. per week the flat rate was originally 12s., but has been amended from time to time. A higher rate was fixed in respect of defectives. The cost of emigration was excluded, the grant for this service being paid out of a variable grant made out of a block grant of £48,000 per annum. The Children Act, 1908, first made the distinction that industrial schools were an educational expense but reformatory schools, having a penal character, were not.

Expenditure under the Children and Young Persons Act, 1933, qualifies for grant from the Home Office or the Ministry of Education. Expenditure on young people over school age ranks for grant from the Home Office and also expenditure on all children and young persons in respect of remand homes, collection of



parental contributions, boarding out and approved schools. Expenditure on children of school age ranks for grant as educational expenditure unless aided by a grant from the Home Office. The local authority are required to collect all contributions charged on parents and others responsible for children and young persons committed to the care of fit persons and to pay these collections over to the Home Office after deducting 10 per cent for their expenses of collection. Where persons are committed to the care of the local authority and boarded out by them, the Home Office grant is 50 per cent of the expenditure incurred and 50 per cent of the parental contributions, provided the latter do not exceed a fixed maximum, except with the approval of the Home Office. Local authorities providing their own approved school receive 50 per cent of the net expenditure plus 50 per cent of the parental contributions. Where the local authority send their cases to outside schools their contribution is approximately one-half the full cost of maintenance and represents a grant of 50 per cent. Expenditure on remand homes qualifies for grants at 50 per cent of the approved expenditure from the 1st November, 1933.

**Unemployment Assistance.** The second appointed day under Part II of the Unemployment Act, 1934, which was the day upon which the (Unemployment) Assistance Board took over its full responsibilities from the public assistance authorities, was originally fixed as the 1st March, 1935.

As the second appointed day had to be postponed the Unemployment Assistance (Temporary Provisions) (No. 2) Act, 1935, was passed in order to compensate local authorities by an Exchequer grant, so that they would be placed as nearly as may be in the financial position they would have occupied had the second appointed day not been postponed.

The Unemployment Assistance (Temporary Provisions) (Amendment) Act, 1937, extended the grants until the second appointed day and made provision for the Minister to adjust the grants in cases where they would be insufficient to meet the actual loss of a council by reducing the grants payable to councils who would otherwise receive more than their actual losses.

**Rural Water Supplies.** Early in 1934, following the lessons of the drought during the previous year, Parliament authorized the Minister of Health to make contributions towards the expenses of local authorities in providing or improving supplies of water in rural localities, such contribution not to exceed £1,000,000 for England and Wales. Grants were only to be made when provision of supplies would not be practicable without assistance and after considering the reasonable charges on



consumers and contributions from the county council and rural district council. The grants were normally lump sum payments towards capital costs, but in exceptional cases by way of annual payments for a period not exceeding twenty years.

The Rural Water Supplies and Sewerage Act, 1944, continued this policy. A credit of £15,000,000 was allocated to the Minister of Health out of which to make grants.

**Tithe Rentcharges.** Grants are payable to rating authorities under the Tithe Act, 1936, for loss of rate income due to the extinguishment of tithe rentcharges issuing out of land, based upon the loss for the year ending 31st March, 1936.

For the twelve months beginning on the 1st October, 1936, 100 per cent of the loss was paid; for the following year 98.62 per cent; for the year ending the 1st October, 1938, 89.24 per cent, the percentage payable being reduced by 1.38 per cent each year. The reduction is due to consideration of the natural reduction in tithe rentcharges which would have taken place. No grant is payable where the amount would be less than £10 (Circular 1710/1938).

**Air-raid Precautions.** For grants in aid of approved expenditure upon air-raid precautions county and county borough councils were classified into four groups, according to the ratio of the rates of their weighted to their unweighted populations.

Ratios not exceeding  $1\frac{1}{2}$  received 60 per cent; between  $1\frac{1}{2}$  and  $2\frac{1}{2}$ , 65 per cent; between  $2\frac{1}{2}$  and 4, 70 per cent; and exceeding 4, 75 per cent. If the expenditure in any year exceeded the produce of a rate of one penny in the £, the grant on the excess qualified for 75 per cent in the first two groups and 85 per cent in the other two groups.

**Physical Training and Recreation Act, 1937.** Expenditure on the training of teachers and leaders ranks for grant from the Ministry of Education at 50 per cent and at the same rate, in cases of exceptional need, for capital expenditure on gymnasiums, playing fields, baths, and holiday camps. (Memo. 172.)

**Cancer Act, 1939.** The Exchequer will provide a block grant equal to 50 per cent of the additional expenditure incurred by county and county borough councils in carrying out the provisions of the Act. Each local authority will receive a share scaled up or down according to the proportion which the ratio of its weighted to unweighted population bears to the national ratio.

## WAR CONDITIONS

In September, 1940, the Government announced that financial assistance would be made available to any local authority in whose area there was a serious risk of breakdown of essential

services owing to the war. Where budget liabilities could not be met without levying a rate of an unreasonable amount, the rate was fixed in consultation with the Ministry of Health. Advances, free of interest, to meet the deficiency were made with the right to call for repayment after the war. In February, 1941, it was stated that the policy would be, except in special circumstances, to write off 75 per cent of the amount advanced, leaving the right to call for repayment to apply only to the balance. The assistance was only granted conditional on the examination of estimates of receipts and payments, the security of reasonable economy consistent with the maintenance of essential services and the utilization of available balances not required for specific liabilities.

### GOVERNMENT INQUIRIES ON LOCAL GRANTS

The Balfour Commission, 1896. In August, 1896, a Royal Commission on Local Taxation was appointed "To inquire into the present system under which taxation is raised for local purposes, and report whether all kinds of real and personal property contribute equitably to such taxation; and, if not, what alterations in the law are desirable in order to secure that result." Their final report was issued on the 21st May, 1901. The Commissioners were far from being unanimous in their findings but appeared to be all agreed that further assistance should be given from national funds for services administered by local authorities.

Services carried out by local authorities were classed as "national or onerous" and "local or beneficial." They said "a service may be called properly local when a preponderant share of the benefit can be directly traced to persons interested in the locality. On the other hand, universality and uniformity of administration is generally the mark of a national service because such administration does not confer special benefit on special places. Again, the presumption is that a service is national when the State insists on its being carried out, and on a certain standard of efficiency being reached." They went on to say "We consider Poor Relief a national service." "Under poor relief we include maintenance of pauper lunatics, the provision of asylums . . . Registration, Valuation, Vaccination, and some others. Police and Criminal Prosecutions are also predominantly national. Education is also national in a high degree. . . . The maintenance of main roads we also consider on the whole to be a national service, and likely to become more so . . ."

The Commissioners were not in favour of these national services being wholly paid for out of national funds but, as rates

fell very much less exactly than taxes in accordance with ability to pay, and as the funds therefor ought to be raised in accordance with the principle of ability, there should be a direct contribution from the Exchequer therefor or the extension and development of the system of assigned revenues. They recommended additional grants to the extent of over £2,500,000.

**The Kempe Committee.** No immediate action was taken on the Report of the Balfour Commission, but in April, 1911, the Chancellor of the Exchequer (Mr. Lloyd George) appointed a Departmental Committee on Local Taxation in England and Wales under the Chairmanship of Sir John A. Kempe, K.C.B.

The terms of reference were—

To enquire into the changes which have taken place in the relations between Imperial and Local Taxation since the Report of the Royal Commission on Local Taxation in 1901; to examine the several proposals made in the Reports of that Commission, and to make recommendations on the subject for the consideration of His Majesty's Government, with a view to the introduction of legislation at an early date.

Evidence was taken from a number of representative bodies and the Final Report was issued in March, 1914. The Report is divided into three parts. The first is historical and descriptive and explains the position in 1901, setting out the recommendations of the Balfour Commission thereon. The second contains the Committee's findings on the subject. A considerable increase in the amount of State grants was advocated as justifiable and necessary. An additional sum of £4,700,000 was mentioned. The Committee recommended the abolition of the assigned revenues system and proposed in substitution therefor direct grants payable only for "semi-national" services and based upon efficiency of administration. The services for which increased assistance was recommended were education, poor relief, police, main roads, public health, criminal prosecutions, mental deficiency, and diseases of animals. The third part of the Report contained the principles advocated on the bases, machinery and areas of local taxation.

The proposals of the Committee on the subject of valuation procedure are of special interest to those engaged in the work of rating and valuation authorities, particularly the recommendation that the Land Valuation Office, set up for making valuations for the proposed land values duties, should be responsible for the preparation of valuation lists.

The Committee also recommended that the proposal that one-half share of the proceeds of the land values duties should be devoted to local government should be withdrawn in view of their findings.

Provision was made in the Finance Bill of 1914 to implement

the recommendations of the Committee, but the war intervened and the proposals were withdrawn.

**The Geddes Committee.** The great increase in national expenditure which followed the cessation of hostilities in 1919, led to the appointment by the Chancellor of the Exchequer (Sir Robert Horne) of a Committee on National Expenditure. It consisted of five eminent gentlemen under the Chairmanship of Sir Eric Geddes, Minister of Transport. The Report was issued in 1922 and contained drastic proposals for curtailing government expenditure. Grants to local authorities came up for consideration and the percentage system of payment was strongly criticized by the Committee who requested that the vicious results of the percentage grant system might be terminated forthwith.

Proposals were made for the reduction of education grants by £18,000,000, public health grants by £2,500,000 and police grants by over £1,500,000. It may be stated quite safely and fairly that the proposals were too drastic and too unscientific to be put into operation.

**The Meston Committee.** A Departmental Committee under the Chairmanship of Lord Meston was appointed in 1922 to consider the system of payment of local grants and to report upon alternative methods of payment. The Committee heard considerable evidence upon the subject and a draft report was prepared, but not published.

It is known that the great majority of the evidence was in favour of retaining, with safeguards, the percentage system. It was recognized that the assigned revenue system was unrelated to the needs of local government and was established on a basis which changed conditions had rendered obsolete. On the other hand percentage grants demand a close supervision by the central departments. They are based upon expenditure and may bear no relation to the needs of an area. Poor areas, unable to spend, received the least, whereas extravagant authorities earned large grants. Some standard of efficiency between services and grants is advisable, possibly upon figures of normal costs. It is highly desirable that the Government should know in advance the extent or limit of its liability for grants.

Although no steps to promote legislation was taken immediately, the central departments took administrative action to impose limits upon certain classes of expenditure. In December, 1925, the Board of Education issued Circular 1371, foreshadowing drastic restrictions in education grants, but, in the face of considerable opposition, it was withdrawn.

In 1928, the Minister of Health (Mr. Neville Chamberlain)

issued the outline of his scheme of financial reorganization which finally became embodied in the Local Government Act, 1929, and which is dealt with later in this chapter.

The May Committee (Committee on National Expenditure). On the 17th March, 1931, the First Lord of the Treasury appointed a Committee under the Chairmanship of Sir G. E. May, Bt., K.B.E.—

To make recommendations to the Chancellor of the Exchequer for effecting forthwith all possible reductions in the National Expenditure on Supply Services, having regard especially to the present and prospective position of the Revenue . . . and to indicate the economies which might be effected if particular policies were either adopted, abandoned or modified.

The Report of the Committee was issued in July, 1931. The expenditure of the government on grants in aid of local authorities automatically brought the subject of local grants under review of the Committee. They divided national expenditure into two parts.

- (1) Services directly administered by the Government; and
- (2) Grants towards services administered by other bodies, mainly local authorities.

Under the second group of "Grant Services" they include under the sub-heading "Great Britain"—

	1931 <i>Estimates</i>
	£
Exchequer Contributions to Local Revenues (including grants for poor law, health and mental deficiency) . . . . .	46,400,000
Education . . . . .	56,800,000
Roads . . . . .	33,000,000
Housing . . . . .	14,500,000
Police . . . . .	12,000,000
Agriculture (including Forestry Development Fund and Beet Sugar subsidy) . . . . .	5,400,000
Grants and Loans for Unemployment Works . . . . .	3,600,000
Miscellaneous . . . . .	900,000
	<hr/>
	<u>£172,600,000</u>

It is shown that this represents an increase of nearly £70,000,000 over 1924 expenditure, although it is pointed out that £26,000,000 of this increase is due to the effect of de-rating.

The Recommendations of the May Committee on matters affecting the grants made by the State to local authorities may be summarized as follows—

- |                     |                                                                                                  |
|---------------------|--------------------------------------------------------------------------------------------------|
| Police . . . . .    | Reduction of pay by 12½ per cent in two instalments, one immediately and the other a year later. |
| Road Fund . . . . . | Abolition of the Fund and substitution of annual grants by Parliamentary votes.                  |
|                     | Postponement and slowing down of schemes.                                                        |
|                     | Reduction of expenditure by £8,000,000 for next two years.                                       |

Afforestation . . .	Restriction of planting.
Education . . .	Withdrawal of 50 per cent minimum limit of grant.
	Reduction of teachers' salaries by 20 per cent.
	Reduction of grant for teachers' salaries from 60 per cent to 50 per cent.
	Withdrawal of grant for reorganization and development.
	Secondary free places conditional on parents' means.
	Increase of Secondary School fees.
	Agricultural grant to be limited to 50 per cent.
Small Holdings . . .	Restriction to careful and judicious experiment on a scale wide enough to give reliable results.
Unemployment . . .	Grants to be limited to 25 per cent of the cost.
Land Drainage . . .	Grants should not normally exceed 25 per cent.
Housing . . .	Immediate reduction of subsidies by £2 ros. per house and biennial revision of subsidies.

### THE FINANCIAL REORGANIZATION OF 1929

The proposals for reform in Local Government and in the financial relations between the Exchequer and Local Authorities presented to Parliament by the Minister of Health in 1928 created a widespread interest and discussion. A perusal of the White Paper (Cmd. 3134) reveals the importance of the Government's scheme.

At the outset it was made clear that the first element in the Government's Plan was to afford relief to productive industry. That involved an alteration in the basis of rating of agricultural, industrial and transport properties, the result of which the Government hoped would contribute to revive agriculture and the basic industries of the country.

It was estimated in the Memorandum that had the derating proposals been in operation in the year 1926-27, the loss of rates, taking England and Wales as a whole, would have amounted in round figures to £24,000,000 for the year. It was obvious, therefore, that if the Local Authorities were to suffer a loss of such magnitude in rating power, a substituted source of revenue would have to be provided.

The relationship between grants in aid of rates out of the Imperial Exchequer and the aggregate total of rates collected by the Local Authorities throughout the country had been, for some time, the subject of controversy. There had, however, been a general recognition that some reforms were urgently needed, especially for the purpose of dealing effectually with districts which have been commonly called "necessitous areas."

It will, therefore, be evident that derating proposals with their consequential results are in direct relationship to the whole fabric of Local Government. In April, 1929, the effect of the new

valuations made in pursuance of the Rating and Valuation Act, 1925, was brought into operation in many parts of the country for the first time.

The Government insisted upon the principle that no scheme for providing an alternative source of revenue for Local Authorities should take the form of a grant varying from year to year with the fluctuating expenditure of each individual Local Authority. Any such scheme was considered likely to diminish effective economical administration.

### DEFECTS OF THE FORMER GRANT SYSTEM

The defects of the former grant system are set forth in the White Paper as follows—

(1) The assigned revenues are related neither to the needs nor even to the expenditure of the local authorities.

(2) The grants under the Agricultural Rates Acts again are not related to the need for public services, but only to expenditure.

(3) and (4) The percentage grants for health services, and the maintenance of roads, require close supervision by the Central Department of the work of the local authorities to whom they are paid. Moreover, as they are not related closely to needs but to expenditure, their effect is that those areas which are poorest, and can least afford to maintain an adequate standard, are just those which receive the least assistance from national funds.

### BASIS OF A PROPER SYSTEM

In the Government's view, as set forth in the White Paper, a proper system should—

(a) Recognize that a fair contribution should be made from the Exchequer towards the cost of local services.

(b) Ensure that local authorities have complete financial interest in their administration.

(c) Be adapted in its working to the needs of the areas.

(d) Permit the greatest freedom of local administration and initiative.

(e) Provide for sufficient general control and advice from the Central Department to ensure a reasonable standard of performance.

The scheme of de-rating for the relief of productive industry followed. It was necessary to reimburse local authorities for their loss of rates through derating. At the same time it was decided to deal with the inequalities of rate burdens which existed between one area and another and also to remove the evils which were considered to be inherent in the percentage



grant system. The following grants were marked out for abolition after the 31st March, 1930, viz.—

- (1) Grants paid out of the Local Taxation Account:
  - Local Taxation Licence Duties.
  - Estate Duties.
  - Agricultural Rates Acts Grants.
- (2) Certain Health Service Grants:
  - Maternity and Child Welfare.
  - Mental Deficiency.                      Venereal Diseases.
  - Tuberculosis.                              Welfare of the Blind.
- (3) Road Grants:
  - Classified Road Grants in London and County Boroughs.
  - Unclassified Road Grants in Counties.

The sums paid into the Local Taxation Account in respect of the standard year 1928–29 were—

Local Taxation Duties—		
Fixed Grant for Liquor Licences . . . .		£ 1,805,045
Fixed Grant for Carriage Licences . . . .		536,954
Other Licences levied by Government . . . .		291,588
		<hr/>
		2,633,587
Estate Duty Grant . . . . .	4,983,707	
Less Tithe Rent charge Rates . . . . .	372,897	
	<hr/>	4,610,810
Customs and Excise Duties Fixed Grant . . . .		1,107,260
Cost of Collection of locally levied licences . . . .		60,000
		<hr/>
		8,411,657
Agricultural Rates Acts Grants—		
1896 Act (fixed) . . . . .	1,317,710	
1923 Act (variable) . . . . .	3,421,046	
	<hr/>	4,738,756
		<hr/>
		£13,150,413

If the grants for police (£3,105,000) and higher education (£807,260) are deducted from this total of £13,150,413, the amount of the discontinued grants from this source is £9,238,153. The purposes for which this sum was distributed to local authorities together with the other discontinued grants (as accurately as can be ascertained) in 1928–29 were as shown on page 680

The General Exchequer Contribution. To compensate local authorities for the discontinuance of these grants and for their losses due to derating and also to provide for the expansion of grant-aided services, a national fund has been created known as the General Exchequer Contribution.

The Loss of Rates. The Local Government Act, 1929, provided that agricultural land and buildings should be entirely



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Grants Payable out of Local Taxation Account—		£
Costs of administering Exchequer Contribution Accounts		25,000
Poor Law Authorities (excluding lunatics)		1,160,000
Maintenance of Lunatic Asylum Patients		1,030,000
Salaries of Health Officers		450,000
Public Vaccinator's fees		10,000
Cost of Collecting licences		60,000
Agricultural Rates		4,738,756
Free Balances of Exchequer Contribution Accounts (excluding locally levied licences)		1,764,397
		<u>9,238,153</u>
Health Service Grants:		
Maternity and Child Welfare	987,088	
Tuberculosis	1,858,669	
Veneral Diseases	302,954	
Blind Welfare	126,029	
Mental Deficiency	608,178	
		<u>3,882,918</u>
Road Fund Grants		3,137,635
		<u>£16,258,706</u>

derated and industrial and freight transport hereditaments derated to the extent of three-quarters of their net rateable values from the 1st October, 1929. The definitions of the properties subject to derating were contained in the Rating and Valuation (Apportionment) Act, 1928, which also provided the procedure for the preparation of special lists of the values of these properties. The Agricultural Rates Act, 1929, provided that the date of derating for agricultural land and buildings should be brought forward to the 1st April, 1929, and a special grant of £68,814 was provided for the loss between the two dates. No claims were necessary in the case of agricultural properties, but in the case of other derated properties a claim had to be made and in any case proposals for the amendment of the valuation list had to be made if properties had not been dealt with as derated in the special lists. To prevent loss through delay in making and dealing with proposals it was provided that all proposals served before the 1st day of October, 1930, should have retrospective effect to the appointed day (1st October, 1929).

The loss of rates of any area in the standard year (1928-29) was calculated by finding the net expenditure borne out of rates which would have been incurred by each spending authority (county, county borough, borough, urban district and rural district council) in the area during that year on the assumption that the expenditure on the transferred poor law and highway

services had been incurred by the authorities to whom those services were transferred, expenditure on poor relief being apportioned, if necessary, on the basis of the number of relief recipients normally resident in the parts of unions transferred. Such proportion of the expenditure so ascertained as the loss of rateable value due to derating on the 1st October, 1929, bore to the total unreduced rateable value prior to that date represented the loss of rates for the area.

**The Loss of Grants.** For the ascertainment of the amount of the discontinued grants the year ending the 31st March, 1929, was taken as a standard year.

An estimate of the loss to local authorities by the discontinuance of these grants on the basis of the standard year was stated by the Minister of Health to be approximately £16,300,000.

**The Additional Sum.** Recognizing that there would be a normal expansion of local government services which would be reflected in increased local expenditure provision was made in the block grant for an exchequer contribution to such increased expenditure. For the first fixed grant period the amount of the additional sum was fixed at £5,000,000 per year. But, as the amount of the discontinued road grants (£3,137,638) together with eighty ninety-first parts of £3,000,000 (£2,637,362) was payable out of the Road Fund as an annual contribution to the general Exchequer Contribution, the term "new money" which has been applied to the additional sum is not appropriate, seeing that the amount available to local authorities out of the Road Fund was thereby reduced. The total amount paid from the Road Fund for 1933-34 was £5,775,000, leaving £39,612,647 payable out of moneys provided by Parliament. The amount of the additional sum may be altered by Parliament for each fixed grant period, but there is a guarantee, modified by the provisions of the Local Government (Financial Provisions) Act, 1937, that the proportion which the general exchequer contribution for any such period bears to the total expenditure borne out of rates and the grants payable under Part VI of the Act out of the general exchequer contribution shall not be less than the proportion which the general exchequer contribution for the first period bore to the corresponding expenditure for 1930-31. The proportions were approximately: grant, 23 per cent; rate and grant-borne expenditure, 77 per cent. Any increase in local expenditure is therefore followed by an increase in the grants after a period.

The Local Government (General Exchequer Contribution) Act, 1933, fixed the amount of grants for the second fixed grant period (1933-37). Based upon the results for the year 1931-32,

the additional sum was increased by £350,000. Subsequent changes are dealt with later.

### DISTRIBUTION OF THE GENERAL EXCHEQUER CONTRIBUTION

It was decided to distribute the new fund known as the General Exchequer Contribution upon an entirely new basis according to a formula by means of which each area would receive a share according to its needs. The original scheme has been amended by the Local Government (Financial Provisions) Act, 1937, which is dealt with later.

The factors in the formula were so arranged that the grant would be based primarily upon population but the basic population would be weighted to make provision for the needs of children under 5 years, low rateable value and abnormal unemployment in all areas and, in counties only, for low density of population per mile of roads. This formula is given in detail in the appendix. It was recognized that the immediate introduction of such a radical change would produce too great a dislocation in some areas. For example it was estimated that Burton-on-Trent would lose 10s. 2d. per head of their population and Gateshead would gain 39s. It was decided, therefore, to introduce the formula gradually by successive stages of quinquennial periods. During the passage of the measure through Parliament the first of the quinquennial periods (known as fixed grant periods) was displaced by two of three and four years respectively. During each of the first four periods an appropriate percentage of the grant was payable on the basis of the loss of rates and grants in the area and the residue on the basis of population weighted according to the factors in the formula. The fixed grants periods were therefore—

First: 3 years from 1st April, 1930, to 31st March, 1933

Second: 4 years from 1st April, 1933, to 31st March, 1937

Third: 5 years from 1st April, 1937, to 31st March, 1942 and quinquennial periods thereafter.

During the first two periods 75 per cent of their loss of rates and grants was made payable to the local authorities in the first instance, and the balance remaining in the pool distributed on the basis of the formula. During the third period 50 per cent of their loss of rates and grants was payable in the first instance, and the balance in the pool on weighted population, and during the fourth period 25 per cent of the loss of rates and grants will be payable. From the 1st April, 1947, the whole of the pool should have been distributed on the basis of the formula.

Owing to the outbreak of the War on 3rd September, 1939, the provisions for the Third Fixed Grant Period have been continued.

The loss of rates and grants for the whole country being known approximately, the balance to be distributed upon the basis of the weighted population was found by deduction. The approximate figure for the weighted population of the whole county being known, by dividing this figure into the balance of the pool, the number of pence per head of the weighted population of the country was found (34·684 pence for the first period and 33·417 pence for the second). The pence per head found in this way, multiplied by the weighted population for each county and county borough, produces the county or county borough apportionment for each area. In the case of the county boroughs their apportionment is the general exchequer grant for the county borough. In the case of the counties provision had to be made for the grants due to the internal borough, urban district and rural district councils. One-half of the total apportionments of all counties divided by the aggregate estimated population of all counties provided a standard figure in pence per head (12s. 6d. for the first fixed grant period, 12s. 2d. for the second) which, when multiplied by the unweighted population of the district, gave the apportionment of the general exchequer grant for each borough and urban district. In the case of rural districts one-fifth of the standard sum for the urban areas (2s. 6d. for the first fixed grant period and 2s. 5½d. for the second) was the figure taken to be multiplied by the unweighted population of a rural district to provide the amount of the grant. This difference of four-fifths was considered to provide an adequate differentiation between urban and rural interests, e.g. public health and highway functions in urban areas. When the grants for all boroughs and districts in the county are deducted from the county apportionment the balance is the general exchequer grant for the county council.

**Special and Parish Rates.** There was also loss of rate income due to derating in respect of rates other than general district rates. With regard to special and parish rates, it was provided that in any rural district where such rates were levied in the standard year (1928-29) some compensation should be made. It was provided that out of the county apportionment 75 per cent of the loss in the first two fixed grant periods, 50 per cent in the third, and 25 per cent in the fourth should be paid to the rural district council, and that the county council should also pay the balance of the loss for the first two periods. From 1930 to 1937 the whole loss was therefore made good to the rural district council, but after 1937 the county council were left free to contribute as they please.

**Additional Exchequer Grants.** The county and county borough councils were guaranteed a gain of not less than 1s. per head of the estimated population, and if such a gain did not arise from

the operation of the scheme a special additional grant was provided for the purpose.

To ensure that this guarantee will not be lost by any increase in the general exchequer contribution reducing the amount of the additional grant for any period subsequent to the first, it was provided that for any such period the additional grant will be the greater of two sums. If the apportionment is increased by reason of an increase in the general exchequer contribution and one-third of that increase is more than 1s. per head then the additional grant shall be the amount of that one-third; otherwise it shall be 1s. per head. On the other hand any diminution of the aggregate rate borne expenditure or weighted population, by reducing the apportionment, will negative the effect of the guaranteed increase.

**Supplementary Exchequer Grants.** Upon the basis outlined above, some boroughs and districts would have been in a worse financial position than formerly. In order to avoid any increase in rates due to this cause, provision was made for a supplementary grant to be paid to any losing area, one-half of the loss being paid by the Exchequer and the other half being met proportionately out of the gains of other areas in the county as far as possible and by the Exchequer if such gains are insufficient therefor. For the first five years the full loss was to be met in this manner, and thereafter it was provided that a reduction of one-fifteenth should be made so that in nineteen years the full effect of the formula scheme would operate.

In county boroughs supplementary grants are only payable where there are, under peculiar local conditions, separately rated areas within the county borough. Provision was made for the grant to be one-half the loss in any losing area for the first five years, reduced by one-fifteenth per year following. Differential rating under boundary extension schemes do not come within the scope of this provision.

**Power to Reduce Grants.** Under the percentage system of grant payment the supervising central department has power to reject expenditure which they do not approve as grant earning. The substitution of a block grant based upon the factors contained in a formula, and not primarily upon expenditure, would have deprived the central authority of this remedy, but for provision which is made for control in another manner. Sect. 104 of the Local Government Act, 1929, provides this control. Where the Minister of Health is satisfied that a reasonable standard of efficiency and progress is not being maintained, or that expenditure has been excessive or unreasonable, he may reduce the grants of a council. Associations and experienced bodies may

make representations to the Minister for this purpose. This control is wider than that the Minister previously possessed because it is not confined to a particular service and the expenditure which may be considered to be excessive and unreasonable appears to be any expenditure of the council and not confined even to grant-aided services. A report must be laid before Parliament with respect to any such reduction made by the Minister.

**Expenditure on New Services.** During the passing of the measure through Parliament some fear was expressed that after the settlement contained in the provisions had been concluded, new services might be imposed upon local authorities without any new State aid being provided. Sect. 135 was inserted making a declaration that the intention was that provision should be made for increased grants under such circumstances. This is a very remarkable provision, because it has no binding effect, as one Parliament cannot bind a future Parliament by legislation. The moral effect, however, would be considerable in the event of any increased expenditure under a new service being placed upon local rates.

The additional expenditure of local authorities under the Midwives Act, 1936, in respect of compensation to retired midwives and other expenses will be aided by an Exchequer grant of 50 per cent until merged in the block grant calculations.

**Consequential Grant Provisions.** The Local Taxation Account of the Exchequer and the Exchequer Contribution Accounts of the county and county borough councils were wound up. Provision had to be made for certain payments previously made through these Accounts. The excess cost of the treatment of diseased cattle is paid out of the Consolidated Fund on Parliamentary authority. Provision was made for the half rates of which owners of tithe rentcharges attached to benefices were relieved to be paid by the Inland Revenue Department out of the Consolidated Fund. The half salaries of public health officers hitherto paid out of the Exchequer Contribution Accounts are now paid out of the county or county borough fund.

**Locally Levied Licences.** The operation of the Local Government Act, 1929, Part VI, created many difficult problems of local finance, and one which assumed considerable importance in some areas is the effect upon the revenue derived from locally levied licences. From the system already described it will have been observed that under the Finance Act, 1908, the county and county borough councils were made responsible for the levy and collection of certain licence duties, viz. to deal in game, for dogs, killing game, guns, carriages, armorial bearings and

male servants. Carriage licences may be disregarded as they are now part of the Road Fund licences. Male servants' licences were abolished by the Finance Act, 1937, and armorial bearings in 1944. The proceeds of these duties ceased to be paid into the Local Taxation Account and therefore were not discontinued by the Local Government Act, 1929. They continue to be paid at local post offices and are paid over to county and county borough councils, as already described.

It was further provided by the Finance Act, 1908, Sect. 6 (2), that—

The transfer under this section shall not affect any equitable adjustment respecting the distribution of the proceeds of the Local Taxation Licences made under the Local Government Act, 1888, or otherwise, but provision may be made by Order in council under this section for any alteration which it appears necessary or expedient to make in consequence of the transfer in the procedure for making any payments, or otherwise giving effect to any such adjustments.

Notwithstanding the change in the venue of these duties under the Finance Act, 1908, in areas where the normal award of the Local Government Commissioners appointed under the Local Government Act, 1888, was in operation, it was necessary for the proceeds of these licences throughout the county to be pooled with grants from the Local Taxation Account and reapportioned among the county and county borough councils according to the provisions of the financial adjustment contained in agreements, or the Commissioners' award, as probably amended from time to time by alterations of areas. As previously stated, the usual method laid down by the Derby Commission was to require the proceeds of all the licences and duties collected in the geographical county to be pooled and distributed so that each county and county borough would receive—

- (a) the amount of their discontinued grants; and
- (b) the remainder upon the basis of rateable value.

If the amount available was insufficient to pay (a) above, the amount was divisible among the participating authorities in proportion to their priority payments.

Proviso (b) of Rule I of Part II of the Fourth Schedule of the Local Government Act, 1929, which laid down the rules to be observed in determining the losses on accounts of grants for which local authorities had to be compensated (during a transitional period) in the general exchequer contribution, provided that "any financial adjustment between spending authorities in force with respect to the standard year, which affected the allocation of the amounts paid or payable to such authorities out of the discontinued grants, should be taken into account in estimating the said amounts."



In ascertaining the discontinued grants upon which the block grant is partly based (for a period) it was necessary to make a deduction (*inter alia*) for the proceeds of the locally levied licences which were not discontinued. The actual proceeds received from the Postmaster were, of course, different from the amount finally received owing to the operation of the financial adjustment in force. Under the terms of the proviso mentioned above, it was concluded that the amount to be deducted from the total grants for the proceeds of the locally levied licences for the purpose of ascertaining the discontinued grants should not be the amounts collected in the area, but such amount varied by the terms of the financial adjustment in force.

Since the 1st April, 1930, the county and county borough councils have received the general exchequer grant from the Exchequer and the locally levied licences from the Postmaster.

Sect. 85 (5) of the Local Government Act, 1929, states—

Where, immediately before the appointed day, there is in force a financial adjustment between any spending authorities with respect to any of the discontinued grants payable to those authorities, such financial adjustments shall, as from the appointed day, cease to have effect, and if and so far as, having regard to the Exchequer Grants payable under this Part of this Act, any new financial adjustment is necessary, a new financial adjustment on an equitable basis shall be made by agreement between the spending authorities, or, in default of agreement, by a single arbitrator appointed by the Minister.

According to the Twelfth Schedule of the Act, the extent of the repeal of Sect. 32 of the Local Government Act, 1888, under which these adjustments were made, is "so far as it relates to discontinued grants." Under Sect. 32 any authority interested in the adjustment and considering it to have become inequitable and being unable to secure a new adjustment by agreement, may appeal to the Minister of Health and, if able to satisfy the Minister that the adjustment has become inequitable, the Minister appoints an arbitrator authorized to make a new equitable adjustment.

The Local Government Act, 1933, which came into operation on the 1st July, 1934, authorizes the Minister of Health to make regulations governing financial adjustments and provides that such regulations may extend to the adjustment of the proceeds of local taxation licences. This provision is also made applicable to any adjustment under Sect. 32 of the Local Government Act, 1888, consequent upon any change effected after the 31st March, 1930.

The Court of Appeal ruled in *Liverpool Corporation and Others v. Lancashire County Council and others*, [1936] 34 L.G.R. 419; 53 T.L.R. 165, that financial adjustments dealing with discontinued



grants were automatically terminated on the 31st March, 1930, and if they dealt with the locally levied licences the local authorities will now receive and retain the amounts collected in their areas until a new equitable adjustment provides some other basis of apportionment.

The adjustment of grant in consequence of alterations or combinations of authorities or alterations of boundaries is governed by the Local Government (Adjustment of Grant) Regulations, 1938.

## REVISION OF THE BLOCK GRANT

At the request of the local authorities, Parliament inserted Section 110, which provided for an investigation by the Minister into the working of the rules under which the formula operates before the 31st March, 1937.

The Minister consulted with representatives of the local authorities' associations and other interested bodies who made recommendations to him proposing the strengthening of the unemployment and density factors.

The proposals of the Minister were embodied in the Local Government (Financial Provisions) Act, 1937.

**Composition and Amount of the Block Grant.** At the outset of the block grant system, the amounts contained in the block grant pool for its three constituent elements were—

(i) Losses due to derating . . . . .	£ 22,292,203
(ii) Losses due to discontinued grants . . . . .	16,279,706
Total losses in respect of rates and grants . . . . .	38,571,909
(iii) Additional sum . . . . .	5,000,000
General Exchequer Contribution . . . . .	£43,571,909
Additional Exchequer Grants . . . . .	515,088
Supplementary Exchequer Grants . . . . .	1,036,567
	<u>£45,123,564</u>

The amount of the losses in respect of rates and grants are fixed quantities, but the Act provided for periodical (now quinquennial) revisions of the total contribution in order to implement the guarantee that the proportion which the contribution bore to the expenditure of all local authorities out of rates and block grants during the year ending the 31st March, 1931, should not be reduced. These proportions were, approximately, block grants 23 per cent, rates and block grants 77 per cent.

The total grants payable for the Second Fixed Grant Period (1933-34 to 1936-37) were—

Losses on account of rates . . .	£22,292,203
Losses on account of grants . . .	16,279,706
Additional Amount . . .	5,350,000
<hr/>	
General Exchequer Contribution . .	43,921,909
Additional Exchequer Grants . .	463,697
Supplementary Exchequer Grants . .	953,587
<hr/>	
<u>£45,339,193</u>	

The addition of £350,000 to the additional sum was due to the operation of the ratio rule.

For the third fixed grant period (1937-42), the operation of the ratio rule would have added approximately £4,427,000 to the block grant pool. It was decided, however, to make certain adjustments in the first instance in respect of—

- (i) Unemployment assistance contributions;
- (ii) The cost of trunk roads taken over by the Minister of Transport; and
- (iii) The abolition of male servants' licence duties.

These adjustments reduced the sum to be added to the General Exchequer Contribution for the period to approximately £2,222,000. To round up this additional amount to 2½ million pounds, the Exchequer has undertaken to add £28,000 each year.

It will be observed that, apart from this sum of £28,000, the money added to the General Exchequer Contribution was due to the local authorities under the statutory guarantee provided under Section 86 of the Act of 1929.

Owing to the Government acceptance of financial responsibility for Supplementary Pensions under the Old Age and Widows' Pensions Act, 1940, the sum of one million pounds has been deducted from the block grant pool to represent the saving to local authorities.

**Merging the Unemployment Contributions.** The contributions payable by local authorities in respect of unemployment assistance under Section 45 of the Unemployment Act, 1934, amounting to £2,187,000, will be deducted from the General Exchequer Contribution. The effect of this new procedure will not relieve local authorities of the aggregate burden of these contributions. Instead of each local authority paying a 60 per cent contribution based on their own local costs during the year ending the 31st March, 1933, the aggregate burden of £2,187,000 will be apportioned among the various county and county borough councils in proportion to their weighted populations for block grant purposes. In other words, this part of the burden of public assistance will be spread according to the needs of each area

and its ability to meet the cost of those needs according to the standard provided by the block grant formula. The Exchequer is not providing any money for this purpose and the local authorities have made it quite clear that they do not regard this arrangement, either expressly or by implication, to affect their claim that the whole cost of the able-bodied unemployed should be borne by the Exchequer.

Nevertheless, this arrangement is particularly favourable to the necessitous areas, for in this way the more prosperous areas are making a substantial contribution towards the relief of the burden of unemployment in the necessitous areas. Being made with unanimity and without reservations, it stands as a memorial to the goodwill displayed by the more prosperous areas to the less fortunate areas.

**Adjustment in Respect of Trunk Roads.** Instead of requiring county councils to make a direct payment to the Minister of Transport towards the cost of maintenance of trunk roads transferred to him under the provisions of the Trunk Roads Act, 1936, there will be deducted from the gross amount of the General Exchequer Contribution the sum of approximately £133,000. This sum represents the proportion of the block grant attracted by the previous expenditure of £575,000 upon the transferred roads. Every county and county borough will bear a share of this sum of £133,000 in a similar manner to the unemployment contribution.

Considered in isolation, the county borough councils have some cause for complaint in having to bear a share of this burden seeing that they have not been relieved of any highway expenditure. Moreover, excepting the small mileage of roads in county boroughs affected by the Trunk Roads Act, 1946, they have still to maintain all the highways in their areas without payment of percentage maintenance grants. County Councils continue to receive their percentage grants and share in the part of the block grant pool which represents the discontinued grants of county boroughs.

Considered in conjunction with the merging of the unemployment contributions, however, the gains of county boroughs far exceed their loss in respect of trunk roads. Moreover, the Exchequer might have called for a reduction of the block grant pool by the amount of their expenditure on transferred trunk roads (approximately £600,000), whereas only the grant proportion of that expenditure has been brought into account for block grant purposes.

**Abolition of Male Servants' Licence Duties.** To compensate local authorities for the loss of revenue they would have suffered

by the cessation of male servants' licences, the sum of £115,000 has been added to the block grant pool. Instead of the amount of the licences collected in their area, the local councils will receive a share of the aggregate revenue based upon their weighted populations for block grant purposes. This, again, will be advantageous to the necessitous areas. Authorities with weighted populations above the average will receive more than they lose, and *vice versa*. The justification for this result appears to be that it has been decided that in future all moneys related to the block grant scheme will only be distributed on the basis of needs. This principle has also been adopted with reference to road grants and grants under the Midwives Act, 1936, and the Cancer Act, 1939.

**Ratio of Exchequer Grant to Local Expenditure.** The effect of the merging of the three above-mentioned items in the General Exchequer Contribution would, in the absence of further legislation, have upset the ratio existing between the Exchequer Contribution and the aggregate rate- and grant-borne expenditure of local authorities, reducing the grant proportion from 23.17 per cent to approximately 22.36 per cent. To ensure the continuance of the original ratio under the changed conditions, provision has been made for a grant proportion of not less than  $22\frac{1}{2}$  per cent to be maintained.

## THE FORMULA FACTORS

Several changes in general conditions have occurred since 1929. There has been a considerable movement in population caused by the overspilling of town populations into other areas and through industrial changes ("the drift to the south"), a decline in the birth rate, the first quinquennial revaluation of property under the Rating and Valuation Act, 1925, and a revival of industry in some areas but a worsening of industrial conditions in others. These all had their reactions upon the factors of the formula. A decrease in the basic population automatically reduces the weight of all other factors. Changes in populations, children and rateable values affect the unemployment and density factors. An increase of population, accompanied by a fall in the birth rate, tends to increase the proportion of the formula grant attracted by the basic population and to decrease the grant based on the weighting factors, a precession which benefits the richer areas and works to the disadvantage of the poorer areas. Some modifications were necessary in order to correct these tendencies and to relate the grants more closely to the needs of the various areas.

Certain proposals were rejected because they failed to produce

an all-round improvement in the distribution of the pool. Factors such as the number of old age pensioners, children of compulsory school age, public assistance cases, and all unemployed women (in place of one-tenth as at present) were tested and found unsatisfactory. The suggestion to use the basic population merely as a medium for the weighting factors by deducting it from the total weighted population was also rejected. Lack of uniformity in the basis of valuation causes the rateable value factor to operate unfairly in some areas, but this factor has not been altered. Rateable values are based upon rental values. These are found to vary considerably in different towns. Assessments may be depressed or kept low in order to attract grant income. The factor is based upon rateable value per head, but the total rateable value includes many properties (e.g. business property and entertainment premises) which have no relation to population. This raises the question as to whether or not these properties should be excluded from the calculation. Prosperous areas requiring the extension of old and the provision of new business premises, however, are likely to lose grants under this factor, and this is in harmony with one of the declared intentions of the scheme to send the Exchequer money where there is need. As taxes are recognized to be based much more upon the principle of ability to pay than local rates, it has been suggested that the average assessment per head of the resident population for income tax purposes might be a better factor than one based upon rateable value. This, however, would be difficult to interpret and ascertain. The population, children, and rateable value factors have therefore been retained in their original form.

**The Unemployment Factor.** The rules contained in the Local Government Act, 1929, provided that for each area the average numbers for three years of the insured unemployed (all males over 18 plus one-tenth of the females) expressed as a percentage of the population should be calculated and the excess over  $1\frac{1}{2}$  per cent ascertained, and the population, as increased by the weighting for children and rateable value, further increased by a percentage equal to ten times the excess over  $1\frac{1}{2}$  per cent. This complex statement may be simplified by the example on page 693.

As the amount of the total Contribution which is being paid on the basis of loss of grants and rates is reduced, an increased proportion of the Contribution is distributed on the basis of weighted population. In order to avoid too great an effect being given to the unemployment factor, the Act of 1929 provided that the multiple of ten should be reduced proportionately with

Estimated population (say) . . . . .	500,000
Weighting for children (say) . . . . .	300,000
Weighting for rateable value (say) . . . . .	250,000

Intermediate weighting . . . . . 1,050,000

Weighting for unemployment—

Local percentage (say)  $6\frac{1}{2}\%$

Less . . .  $1\frac{1}{2}\%$

5%

$5 \times 10 = 50$ . 50% of 1,050,000 = 525,000

Total weighting for county borough . . . 1,575,000

the proportion of the grant based upon losses on account of grants and rates. Under this rule the multiple of ten should have been reduced to approximately 5·8 from 1937 to 1942. Owing to the continued volume of unemployment in some areas, it was decided to retain the multiple of ten.

Moreover, as an additional measure of assistance to the necessitous areas, a “super-weighting” for unemployment has been introduced for areas where the local percentage of unemployment exceeds 5. For this super-weighting a multiple of 5 is being used.

The special and distressed areas benefit considerably through these changes in the unemployment factor. The amount by which they benefit will not be provided by the Exchequer but will be derived from grant money which would otherwise have gone to other areas, generally from those in which unemployment has declined. Taken together with the effect of the cessation of the necessity to make any direct payment of unemployment contributions, this represents a formidable sum provided by the more prosperous areas for the benefit of the necessitous areas. That the former have agreed to this adjustment is a striking testimony to their goodwill in the consideration of the needs of the latter. It should bring about a reduction of rates in the distressed areas and facilitate the restarting of the wheels of industry. Fortunately, owing to the general increase in the total General Exchequer Contribution, there are few areas which suffer a reduction of grant compared with what they have been receiving and so this modification had the advantage of coming at an opportune time.

**The Density Factor.** With a few exceptions, the distressed areas are county boroughs. Generally, therefore, the counties have suffered by the changes introduced with regard to the unemployment factor. The loss would have been onerous but for the compensation derived from a strengthening of the density factor

which applies to counties only. This strengthening takes two forms. In the first place, the datum figures upon which it is based have been modified. Secondly, it is to be calculated upon a new intermediate weighting. It was formerly calculated upon the same weighting as the unemployment factor, namely, the population as weighted for children and rateable value. Now, however, the unemployment weighting will also be included. As the unemployment weighting has also been strengthened, considerable advantage accrues to the necessitous counties. The position in counties generally is improved, thus counterbalancing the strengthening of the unemployment factor.

### DISTRIBUTION OF COUNTY APPORTIONMENTS

It has been decided to make no alteration in the original scheme with regard to the payment to county districts of their capitation grants. The modifications which have been proposed have been found not to produce any better results in the aggregate.

Regret has been expressed that no way has been found to compensate districts which have had to suffer comparatively large reductions of rateable value due to derating. It appears that it has to be accepted as an irrevocable principle that the effect of derating must cease to operate as a factor affecting the distribution of grant moneys.

Where the county apportionment is insufficient to pay the full amount of the capitation grants to districts, the Act of 1929 provided for an Exchequer grant to meet the deficiency. The amount of these "proviso" grants have increased considerably. The county councils concerned are now called upon to contribute one-half, up to a maximum of a penny rate. State funds are expected to save approximately £100,000 under this heading. These deficiencies are perhaps the most unfortunate feature of the block grant scheme, and there is an opinion that the deficiency grants are provided merely as an expedient to cover up an inherent defect in the system. Why should not the grants to the districts be determined by allocating a fixed proportion of the county apportionment? Why should there be any district allocations at all? They receive a rateable share of the county council's grant. Why should not the whole be payable upon a rateable value basis? Actual population has many defects as a basis of distribution. But would rateable value be any better? The question of the lack of uniformity in the basis of valuation in different areas would arise in this connection.

### ADDITIONAL EXCHEQUER GRANTS

The Act of 1929 provided that the introduction of the new

grant scheme should ensure a gain of at least 1s. per head of the population to every county and county borough. Where it was necessary for this purpose, an Additional Exchequer Grant was payable. But where the re-calculated weighted population of any area shows that its needs have decreased, provision is made for its additional grants to be scaled down accordingly. It is difficult for local authorities in such areas to understand why a reduction in their block grant should be accompanied by a decrease in their additional grant. Moreover, on this occasion, their decreased weighted population has probably been seriously affected by the changes introduced into the grant system. As a concession to these areas under such circumstances the Exchequer has agreed to calculate these grants as if the revised formula had been in operation originally and, furthermore, to take into account the diminution in weighted population only so far as it exceeds  $2\frac{1}{2}$  per cent. It is estimated that the concession in this respect will cost the Exchequer £150,000 per annum.

### SPECIAL AND PARISH RATES

For the period from 1930 to 1937, county councils were required to make up, by way of deduction from the county apportionment, one-fourth of the loss on account of any special or parish rates in rural districts due to derating. From 1937 any compensation payable by a county council was to have been an optional matter, but it has now been decided to require the county council to continue to contribute not less than one-fourth of the loss, continuing in this way to spread this part of the burden over the whole county.

### THE BURDEN OF LOSING AREAS

Under the block grant scheme some districts were bound to be involved in loss, whilst others were ensured a gain. In order to mitigate the severity of the loss to losing areas, it was provided that no loss would fall upon them during the first five years of the new scheme, and during the next fourteen years the loss would be introduced by visiting one-fifteenth upon the district each succeeding year. But now the Minister of Health, if any district can satisfy him that this operation would cause special hardship or difficulty, may issue an order directing that the proportion of one-fifteenth shall be halved to one-thirtieth. If the Minister can be satisfied that hardship still remains, he may direct that the county apportionment shall bear the loss. The additional cost to the Exchequer under this heading is not expected to be more than £70,000 per annum.



## THE METROPOLIS

The provisions already explained with regard to counties extend to London, but the allocation of grants to councils within the London area give rise to peculiar considerations. The Metropolitan boroughs receive grants based upon their populations weighted in respect of children and rateable value. With a view to bringing about a greater equalization of rates within the Metropolis, the Minister is authorized to make a scheme in consultation with representatives of the local authorities concerned or their representatives. It is expected that the derating losses of the Metropolitan boroughs, which are not provided for out of the allocation of the county apportionment, will be pooled and each borough made to bear a rateable share. The advantage of this arrangement, by recognizing the Metropolis to be one industrial community, is to spread the derating losses equally over all London ratepayers in the same manner as in the provincial county boroughs.

## ABOLITION OF ADJUSTMENT OF PRECEPTS ON URBAN AUTHORITIES

Although it had no direct relationship with the block grant system, it was decided to repeal the proviso to Section 9 (2) (c) of the Rating and Valuation Act, 1925. This proviso required urban authorities to add back to the produce of a penny rate for precept purposes the relief granted to certain properties, such as reservoirs, which receive preferential treatment only in urban areas. The principle upon which the proviso was based was to secure that the basis of county contributions from urban areas should be made on the same basis. It is recognized, however, that conditions have so altered, through derating and other provisions, that the adjustment is no longer reasonable. This removes the cause of much irritation in some urban districts, where the operation of the proviso has made certain properties, from the rating standpoint, a liability to the rating authority.

## FURTHER REVISION OF THE BLOCK GRANT SCHEME

Section 101 only provided for one revision of the formula. The many peculiar features connected with the block grant scheme which were brought to light during the investigation led to the conclusion that a further investigation should be held before the whole of the Contribution is distributed on the basis of the formula alone and provision was made to this end. This is dealt with later.

## GENERAL OBSERVATIONS

One feature which seems to have become obvious to those interested in the problem of national grants in aid of local government is that the block grant distribution is but a part of a much larger problem, namely, the entire financial relationship between the National Exchequer and local authorities. Notwithstanding the criticism of the percentage system of grant payment, many local authorities feel that expenditure is the real "yardstick" of local burdens, and should be the basis of state assistance. The greater part of national grants is still payable upon that basis, e.g. Education and Police. All that has been done in respect of the block grant is to relate the grants to aggregate expenditure instead of local expenditure. The expenditure of local authorities still governs the amount of the grant, but only after a lag of at least two years. Many local authorities find that this lag places very heavy additional burdens upon them for which there is no grant aid, at any rate no immediate compensation.

The block grants have not brought about any equality of burden among local authorities. The necessitous areas, still struggling under heavy burdens of public assistance, hardly feel the benefit which their admittedly generous proportion of the block grant brings to them. They feel that their needs are greater than any formula related to the amount of the block grant pool can supply, however weird and wonderful it may be. In these areas, population appears to be an unsatisfactory basis. Their populations have been reduced by migration and industrial transference, whilst their burdens in respect of poor relief have been increased. They have to continue to maintain schools, sewers, streets, hospitals, and other social services for those who remain, almost always without any reduction of cost in respect of those who have left the area. The growth of population in prosperous areas lessens the proportion of grant money for areas where population has decreased. There appears to be a good case for either entirely eliminating the basic population figure from the weighted population or making a percentage reduction in respect of unweighted population.

The factor for children has no regard to the character of the children of an area so long as they are under five. The Maternity and Child Welfare Service has assumed large proportions in certain areas during recent years, whereas in others there is hardly any need for public effort in that direction. This factor might be related more to the needs of an area by only dealing with children coming within the scope of some form of public expenditure.

It is difficult to understand why uninsured persons in receipt of public assistance cannot be brought into account as well as registered insured persons. If the varying standards of granting relief in various areas is the only drawback, surely some rectifying factor could be introduced to meet that situation.

The unemployment contributions of the local authorities are now such a small part (approximately 5 per cent) of the total national unemployment burden that the Exchequer might find the goodwill of the local authorities worth more than they would lose by ceasing to deduct this sum from the block grant pool.

It appears also to be overdue for some form of control of local assessments to be introduced so that uniformity may be established to ensure that a fairer proportion of grant money could be related to genuinely low rateable value. It might be found more equitable to deduct the value of empty properties before finding the rateable value per head. On the other hand, the burden of empty property which falls upon local authorities would suggest the strengthening of the formula in some positive manner to assist further those areas which suffer from industrial depression.

It has been discovered that any large variation in the value of one factor reacts with considerable effect upon the general distribution of the pool. To remedy this phenomenon a specific proportion of the total grant might be allocated to each factor in the formula.

The allocation of the county apportionments to districts upon a *per capita* basis is unscientific and leaves many districts with a feeling of inequitable treatment. The richer districts benefit along with the poorer districts, whilst it is the needs of the latter which have attracted the grant to the county. Some system of rate equalization such as that adopted for the Metropolis, might be more logical and equitable.

With regard to the ratio between the Contribution and the rate- and grant-borne expenditure, it would appear to be more equitable if the Contribution were made to decrease or increase in the same proportion as the rate expenditure of local authorities.

The money contributed to the block grant pool in respect of derating losses is gradually losing its identity, and will shortly cease to be distributed with any relation to loss of rateable value. This appears to be a fixed principle of the new grant system. Nevertheless, there are many who consider that this is not as it should be. This part of the pool might be segregated and allocated according to loss of rates.

But when all criticisms have been levelled against the block grant system, the fact remains that it is workable and to a large degree has accomplished its designed function, namely, to drive

the Exchequer money along the lines of need. The recent investigation has sent £2½ million to the coffers of the distressed areas. This is sufficient to demonstrate that the system can be made elastic enough to meet to some extent the hardest cases. The Exchequer is finding approximately £150,000 of additional money to meet the cases of difficulty which have arisen. No formula can meet every eventuality and proposed variations have been found to produce new features no less difficult than those they proposed to correct.

The following statement shows the total grants paid to local authorities in England and Wales for the year 1935-36—

	<i>Revenue</i>	<i>Capital</i>	<i>Total</i>
	£	£	£
Rate Fund Services . . .	132,215,012	2,368,237	134,583,249
Trading Services . . .	732,796	19,374	752,170
	<u>132,947,808</u>	<u>2,387,611</u>	<u>135,335,419</u>

The following table shows (in millions of pounds) the way in which the total expenditure of local authorities in England and Wales was shared by rates, grants and other income during the years stated—

AMOUNTS IN MILLIONS OF POUNDS

	1913-14	1921-22	1923-24	1925-26	1927-28	1929-30	1931-32	1933-34	1935-36
Rates . . .	71·3	170·9	143·3	148·6	166·7	156·3	148·3	148·6	164·9
Grants . . .	22·6	76·6	78·3	84·6	90·1	107·8	134·1	125·1	135·4
Loans or Capital Receipts . . .	20·0	127·4	127·9	99·2	128·0	101·6	102·1	83·1	93·4
Other Receipts . . .	55·4	126·9	46·5	139·0	159·2	164·5	171·9	176·5	183·5
Total . . .	<u>169·3</u>	<u>501·8</u>	<u>396·0</u>	<u>471·4</u>	<u>544·0</u>	<u>530·2</u>	<u>556·4</u>	<u>533·3</u>	<u>577·2</u>

## LOCAL GOVERNMENT ACT, 1888

## FIRST SCHEDULE

*Local Taxation Licences*

<sup>1</sup> Licences for the sale of intoxicating liquor for consumption on the premises—

- Retailers of spirits (Publicans).
- Retailers of spirits, occasional licences.
- Retailers of beer.
- Retailers of beer, occasional licences.
- Retailers of beer and wine.
- Retailers of cider.
- Retailers of wine.
- Retailers of wine, occasional licences.
- Retailers of sweets.

<sup>1</sup> Stereotyped 1908-9.

<sup>1</sup> Licences for the sale of intoxicating liquor by retail, by persons not licensed to deal therein, for consumption off the premises—

Retailers of beer.	Retailers of wine.
Retailers of beer and wine.	Retailers of sweets.
Retailers of cider.	Retailers of table beer.

<sup>2</sup> Licences to deal in game.

Licences for—

<sup>1</sup> Beer dealers.	Tobacco dealers.
<sup>1</sup> Spirit dealers.	<sup>1</sup> Carriages.
<sup>1</sup> Sweets dealers.	<sup>1</sup> Locomotives.
<sup>1</sup> Wine dealers.	<sup>2</sup> Armorial bearings. <sup>4</sup>
Refreshment house keepers.	<sup>2</sup> Male servants. <sup>3</sup>
<sup>2</sup> Dogs.	Hawkers.
<sup>2</sup> Killing game.	House agents.
<sup>2</sup> Guns.	Pawnbrokers.
Appraisers.	Plate dealers.
Auctioneers.	

## THE GENERAL EXCHEQUER GRANT FORMULA

Rules for Determining Weighted Population (Original Formula)

1. The estimated population of the county or county borough in the appropriate year shall be increased—

(i) if the estimated number of children under five years of age per thousand of the estimated population exceeds fifty, by the percentage represented by the proportion which that excess bears to fifty;

(ii) if, according to the valuation lists in force on the appropriate date, the rateable value per head of the estimated population of the county or county borough is less than ten pounds, by the percentage represented by the proportion which the deficiency bears to ten pounds.

2. There shall be estimated and certified the average numbers during the three calendar years immediately preceding the beginning of each fixed grant period of unemployed insured men and of unemployed insured women resident in each county and county borough, and there shall be ascertained the percentage represented by the proportion which the number of unemployed men increased by 10 per cent of the unemployed insured women bears to the average estimated population of the county or county borough for those three years and if as respects any county or county borough, that percentage exceeds  $1\frac{1}{2}$ , the estimated population of the county or county borough in the appropriate year as increased in accordance with Rule 1 contained

<sup>1</sup> Stereotyped 1908-9.

<sup>2</sup> Locally Levied Licences (not discontinued).

<sup>3</sup> Abolished (Finance Act, 1937).

<sup>4</sup> Abolished (Finance Act, 1944).

in this Part of this Schedule shall be further increased by a percentage equal to the amount of such excess multiplied by the appropriate multiple.

3. There shall be ascertained and certified the number of miles of road in every county other than the county of London, and the estimated population of every such county as increased in accordance with Rule 1 contained in this Part of this Schedule shall be further increased—

(a) in the case of a county in which the estimated population per mile of roads is in the appropriate year less than one hundred, by the percentage represented by the proportion which the difference between two hundred and the estimated population per mile of roads bears to two hundred; and

(b) in the case of a county in which the estimated population per mile of roads is in the appropriate year one hundred or more, by the percentage represented by the proportion which fifty bears to the estimated population per mile of roads.

4. The estimated population of the county or county borough as increased in accordance with the provisions of the foregoing rules contained in this Part of this Schedule shall be the weighted population of the county or county borough.

## REVISED FORMULA

### Rules for Determining Weighted Population

1. The estimated population of the county or county borough in the appropriate year shall be increased—

(i) if the estimated number of children under five years of age per thousand of the estimated population exceeds fifty, by the percentage represented by the proportion which that excess bears to fifty;

(ii) if, according to the valuation lists in force on the appropriate date, the rateable value per head of the estimated population of the county or county borough is less than £10, by the percentage represented by the proportion which the deficiency bears to £10.

2. There shall be estimated and certified the average numbers during the three calendar years immediately preceding the beginning of each fixed grant period of unemployed insured men and of unemployed insured women resident in each county and county borough, and there shall be ascertained the percentage (hereafter in this Rule referred to as the "unemployment percentage") represented by the proportion which the number of

unemployed insured men increased by 10 per cent of the number of unemployed insured women bears to the estimated population of the county or county borough for the calendar year in which the appropriate year begins and if as respects any county or county borough the unemployment percentage exceeds one-and-a-half, the estimated population of the county or county borough in the appropriate year as increased in accordance with Rule 1 contained in this Part of this Schedule shall be further increased as follows—

(i) if the unemployment percentage exceeds one-and-a-half but does not exceed five, by a percentage equal to the amount of the excess over one-and-a-half multiplied by ten; and

(ii) if the unemployment exceeds five, by a percentage equal to the sum of the two following amounts, that is to say, the excess of the unemployment percentage over one-and-a-half multiplied by ten, and the excess of the unemployment percentage over five multiplied by five.

3. There shall be ascertained and certified the number of miles of road in every county other than the county of London, and the estimated population of every such county as increased in accordance with Rules 1 and 2 contained in this Part of this Schedule shall be further increased—

(a) in the case of a county in which the estimated population per mile of roads is in the appropriate year less than 100, by the percentage represented by the proportion which the difference between 300 and the estimated population per mile of roads bears to 300; and

(b) in the case of a county in which the estimated population per mile of roads is in the appropriate year 100 or more, by the percentage represented by the proportion which 40 bears to the difference between the estimated population per mile of roads and 40.

4. The estimated population of the county or county borough as increased in accordance with the provisions of the foregoing rules contained in this Part of this Schedule shall be the weighted population of the county or county borough.

5. For the purposes of this Part of this Schedule the "appropriate date" shall as respects the first fixed grant period, be the 1st day of October, 1929, and as respects every other fixed grant period, the 1st, or in London the 6th, of April in the last year of the preceding fixed grant period.

**LOCAL GOVERNMENT (ADJUSTMENT OF GRANT)  
REGULATIONS, 1938.**

These Regulations supersede provisional regulations issued in February, 1938, and do not differ in any material respect from those regulations. The provisional regulations, and therefore these regulations, became necessary upon the passing of the Local Government (Financial Provisions) Act, 1937, which made certain alterations in the law regarding Additional Exchequer Grants and grants towards the losses or gains of country districts. They repeal Regulations of 1932 and 1934 and apply to alterations of boundaries from the 1st April, 1937.

The Local Government Act, 1929, Sect. 108 (1), empowers the Minister of Health to make regulations as to the manner in which the grants payable under Part VI of the Act are to be adjusted if and so far as any such adjustment is required in consequence of any alterations or combinations of authorities or alterations of boundaries. Reference to newly constituted county councils and county boroughs are omitted, presumably because it is realized that the Order of the Act constituting such new authorities would deal with these matters. With regard to apportionments of additional grants, these are now based upon weighted populations in lieu of standard sums of the respective authorities. This becomes necessary in view of the revised rules for calculating weighted population having made the standard sums inappropriate for the purpose.

**LOCAL GOVERNMENT (FINANCIAL PROVISIONS) ACT, 1946**

Owing to war conditions, the Third Fixed Grant Period (1937-38 to 1941-42) was extended until a date after the war to be fixed by Parliament.

*The Local Government (Financial Provision) Act, 1946*, made provision for an interim increase in the General Exchequer Contribution from the 1st April, 1945, to the 31st March, 1948. Local Authorities were receiving a smaller block grant than they would have done if there had been no stabilization due to war conditions. It was considered that the time was not opportune to review the position. Accordingly, a new Interim Supplementary Grant was provided. For 1945-46, a grant of £10 was provided; for 1946-47 a grant of £11; and for 1947-48 £12 millions to supplement the existing block grants. In the distribution of this money a form of equalization was introduced. For the year 1945-46, the product of a rate of 8d. over the whole country, a sum of about £19,280,000 was added to the £10 millions. This sum is apportioned between the county and county boroughs in proportion to their expenditure in 1942-43 which was met out of rates



block grants and the advances to local authorities in financial difficulties. From the amount apportioned was deducted the product of a rate of 8d. in the county or county borough. The result is designed to assist the most heavily rated areas. For 1946-47 and 1947-48 the product of a rate of 9d. and 10d. respectively will be used for this purpose. Out of the amount allocated to counties capitation payments are made to county districts. In the case of non-county boroughs and urban districts the capitation rates are 2s., 2s. 3d., and 2s. 8d., and in rural districts 8d., 9d., and 10d., respectively for the three years 1945-46, 1946-47 and 1947-48.

### CIVIL DEFENCE GRANTS

(NOTE. Although the progress of the War since 3rd September, 1939, has affected these Grants it has been considered expedient to retain the text.)

Exchequer grants are payable in respect of approved expenditure in accordance with the provision of the Civil Defence Acts, 1937 and 1939, and the Regulations issued thereunder.

The standard rate of grant is paid according to a formula based upon the ratio which the weighted population of an area bears to the estimated population. If the expenditure in any year exceeds a rate of 1d. in the £, an increased rate of grant is payable, as shown below—

<i>Ratio of Weighted to Estimated Population.</i>	<i>Normal Grant.</i>	<i>If Over 1d. Rate.</i>
	%	%
Under 1.5 . . . . .	60	
Between 1.5 and 2.5 . . . . .	65	75
Between 2.5 and 4.0 . . . . .	70	
Over 4.0 . . . . .	75	85

Special rates are paid in aid of the following expenses—

*Ministry of Health.* Treatment of V.D.: 75 per cent.

*Ministry of Home Security.* Camouflage painting and netting: 50 per cent.

*Board of Trade.* Public utilities—

Due functioning: 50 to 75 per cent.

Anti-glare measures: 50 per cent.

Air raid shelters: 35 per cent.

The following expenses are wholly repayable out of Exchequer funds—

*Ministry of Home Security.* Pay of whole-time A.R.P. personnel, subsistence allowances to fire guards on business and local authorities premises. Removals and storage of salvaged furniture. Compensation for premises taken for Civil Defence. Cleaning public shelters. Invasion defence administration.

Hire of petrol pumps. War damage to hired vehicles. Deterring aircraft landing. War damage road repairs. Clearance of debris and salvage. Release from contracts. Sale of materials losses.

*Home Office.* Pay of Police War Reserve.

*Ministry of Health.* Equipment for—

Casualty services.

Rescue Services.

First Aid Posts.

Cleansing Centres.

Premises required for—

First Aid Posts.

Ambulances.

Mortuaries.

Emergency Hospitals.

Rest Centres.

War Time Nurseries.

Civil Nursing Reserve.

War damage repairs to houses.

Feeding and rehousing homeless persons.

War refugees.

Burial of war dead.

Civil evacuation.

*Ministry of Transport.* Road barriers—provision and lighting.  
Removal of road signs.

Expenditure from the 1st January, 1937, qualifies for grant.

Remuneration of employees is eligible only under the following circumstances—

(1) where they have been appointed for and wholly employed on civil defence services; or

(2) where it is additional cost due to employment on civil defence; or

(3) where it is an additional payment for additional duties on civil defence; or

(4) where it is the proportion paid for air-raid precautions services to a person appointed partly for other duties.

There is no general approval to any particular sum of expenditure by reason of the approval of schemes and proposals. Proposals involving expenditure require the submission of estimates, plans, specifications and particulars of persons to be employed and their remuneration in order to receive the approval of the Minister.

It is a reasonable safeguard for local authorities to obtain official concurrence before they commit themselves to expenditure. Where a member of the staff is seconded for this service his salary or wages will be sanctioned, in proper cases, for grant purposes. If, as in the case of the police, the expenditure is

already grant-aided, it is expected that a substitute will be appointed to take the place of the seconded officer in which case the grant will be 50 per cent of the substitute's salary. The expenditure in the case of superannuable staff may include the equivalent contribution on the employee's salary.

Expenditure of a capital nature, unless relatively small, must be estimated upon the basis of the "appropriate loan charges." This assumes whatever the actual method of financing capital expenditure that it is met by way of loan repayable over the appropriate term of years. The rate of interest will be reckoned as that fixed by the Treasury for Local Loans Fund advances.

Loan charges on property belonging to the local authority will not rank for grant unless it is additional expenditure incurred or income is lost to the local authority for civil defence purposes.

### TOWN AND COUNTRY PLANNING

Grants for planning purposes are provided for the first time by the Town and Country Planning Act, 1944, but only on a temporary basis. The Minister of Town and Country Planning may make grants to local planning authorities towards their loan charges on capital borrowed for acquiring and clearing land in an area of extensive war damage ("blitzed" areas) or an associated "overspill" area. In the case of "blitzed" areas grants can be made to cover the loan charges for the first two years. If the area is incapable of being brought into substantial use thereafter the grants may cover a further eight years; and, if the Minister and the Treasury consider special circumstances exist therefore, grants for a further five years may be made, making a maximum of fifteen years' loan charges.

If land is required for the relocation of population and industry from a "blitzed" area or the replacement of open space in the course of redevelopment of such an area, grants towards the loan charges may be made for the first two years and one-half the loan charges for a further two years only.

Planning authorities may make contributions to a highway authority, including the Minister of Transport, in respect of part of a trunk road to enable the highway authority to acquire land, outside a "blitzed" area, but necessary to secure a satisfactory lay-out or development thereof, or to provide proper means of access to an associated "overspill" area, towards the construction or improvement of a road or carrying out an improvement, or controlling the development of frontages or lands abutting thereon or adjacent thereto. The Minister may make a grant for the first two years' loan charges in respect of the cost of those contributions. If the planning authority is also the highway

authority they may receive the grants in respect of the expenditure.

The value of land acquired before the commencement of the Act and appropriated therefor will rank for grant. The value will be treated as money borrowed on such terms as the Treasury may determine. Compensation or contributions paid to restrict the use of land subsequently acquired will rank for grants up to the amount by which the purchase price of the land has been reduced. Such payment will be treated as having been borrowed on such terms as the Treasury may determine.

Money belonging to a planning authority and used for grant-aided purposes will be treated as though borrowed for those purposes. These grants are payable outright for the first two years in all cases and for four years in respect of "overspill" areas. Grants for areas of extensive war damage after the first two years are subject to repayment to the extent that the scheme of redevelopment shows a net gain. For this purpose the Minister may fix a date for a financial review and thereafter undertake such reviews every five years.

The Town and Country Planning Bill, 1947, now before Parliament, proposes to substitute an entirely new method of grant in aid to that provided in the the Town and Country Planning Act, 1944.

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## GOVERNMENT GRANTS TO LOCAL AUTHORITIES

<i>Central Authority</i>	<i>Nature of Grant</i>	<i>Normal Amount</i>
Ministry of Agriculture and Fisheries	Cost of Administration of County Agricultural Committees . . . .	100%
	Agricultural Education—	
	Capital costs . . . . .	75%
	Annual Expenses . . . . .	66½%
	Compensation for slaughter of Tuberculosis Cattle . . . . .	75%
	Small Holdings losses . . . . .	75%
	Land Drainage Works . . . . .	Variable
Ministry of Education (a)	Education . . . . .	Formula
	Highly Rated Area . . . . .	Formula
	Low Rateable Value . . . . .	Formula
	Welsh Intermediate Education . . . .	Block Grant
		£30,000
	Physical training and recreation . .	50%
	Museums for Exhibits . . . . .	50%
Forestry Commission	Afforestation . . . . .	{not exceeding £4 per acre
Ministry of Health	Port Health Expenses . . . . .	50%
	Midwife Training . . . . .	£35 per trainee
	Health Visitors . . . . .	£20 per trainee
	Rural Reconditioning . . . . .	50%
	Building Society losses . . . . .	50%
	General Exchequer Contribution . . .	Formula
	Additional Exchequer Grant . . . . .	Formula
	Supplementary Exchequer Grant . . .	See page 684
	Rural Water Supplies . . . . .	Variable
	Midwives Act, 1936 . . . . .	50% (average)
	Loss of Rates on Tithe Rentcharge . .	Reducing annuity
	Housing, Town and Country Planning .	See page 706
Home Office	Inebriates Homes . . . . .	16s. per person per week
	Police . . . . .	50%
	Training Probation Officers . . . . .	100%
	Other Probation Expenditure . . . . .	47½ to 48½%
	Approved Schools . . . . .	50%
	Air Raid Precautions . . . . .	60% to 85%
Ministry of Labour	Juvenile Employment Centres . . . .	75%

(a) These are under consideration with a view to revision to meet the changes introduced by the Education Act, 1944.

<i>Central Authority</i>	<i>Nature of Grant</i>	<i>Normal Amount</i>
Ministry of Transport	Road Fund Licences and Registration .	100%
	Roads and Bridges—	
	County Maintenance:	
	Class I . . . . .	75%
	Class II . . . . .	60%
	Class III . . . . .	50%
	Construction and Improvements:	
	Trunk Roads . . . . .	100%
	Class I . . . . .	60%
	Class II . . . . .	50%
	Dual Carriageways and Cycle Tracks .	60 to 75%
	Reconstructing Private Bridges .	75%
	Freeing Toll Bridges . . . . .	75%
	Weighing Machines—	
	Capital Cost . . . . .	25%
	Maintenance . . . . .	50%
	Portable Weighbridges (counties only)	60%
	Traffic Signals: Cost and Maintenance .	60%
	Pedestrian Crossings . . . . .	60%
	Freeing Tolls:	
	Class I . . . . .	60%
	Class II . . . . .	50%
Treasury	Major Road Ahead Signs (except county boroughs):	
	Class I . . . . .	60%
Development Commissioners	Class II . . . . .	50%
	Speed Limit Signs (except county boroughs) . . . . .	60%
	Snowploughs and adaptation of vehicles therefor . . . . .	50%
Treasury	Register of Electors . . . . .	50%
Development Commissioners	Development of Economic Resources .	Variable

## CHAPTER XXVII

### BORROWING POWERS OF LOCAL AUTHORITIES

EXCEPT in cases which are rare and exceptional, local authorities have no general authority to raise money by way of loan. Their borrowing powers are limited to the provisions of statute law, which also regulate their loan procedure in many directions. Without these powers it would be impossible for public bodies to undertake large works which necessitate the outlay of large amounts of capital. The spreading of the expense of these undertakings, such as waterworks, over a term of years is also a more equitable method of paying for these burdens, payment for future benefits being shared by those participating therein. It is contended by the "fructification" theory that it is more favourable to commerce and industry to meet these expenditures out of loans than out of current rates and taxes. Even to save the increased cost of interest, it is contended, would not compensate for the advantage gained by industry. To meet large capital costs out of current revenue would cause rates to fluctuate widely from year to year, which is undesirable. Such fluctuations, however, might be avoided by utilizing annual surpluses for capital purposes.

Much of the expenditure of local authorities financed out of loans is of a reproductive character and the annual income is sufficient to repay the annual charges both for interest and capital repayments, e.g. passenger transport. In such cases no exception can be taken to a policy of borrowing, although it is sometimes contended that private enterprise is stifled thereby.

For works of an unremunerative character quite different considerations arise. Some economists contend that such expenditure should be met entirely out of income. Questions of public necessity, such as the provision of a sewerage system, must be also considered as justifying a policy of borrowing for such works. It can often be shown that so-called unremunerative debt is indirectly productive by increasing the income-earning capacity of the community, e.g. roads. On the other hand the burden of loan debt may operate to reduce the spending power of the public, and thus negative to a greater or lesser degree the benefits derived.

### THE POLICY OF PARLIAMENT

The fact that a local authority must make provision for the redemption of its loan debt is emphasized in paragraph 2 of the

Report of the Select Committee on the Application of Sinking Funds in exercise of Borrowing Powers (1902) from which the following is an extract: "It has been the policy of Parliament for many years to require that local loans should be repaid within a limited number of years, and to prevent the establishment by any local authority of a permanent debt. To secure this object each general statute which confers borrowing powers upon local authorities specifies a maximum period for the repayment of loans raised under such powers. Within the limits thus established, a discretion is, in English and Irish Acts, as a rule left to the Government department specially concerned with the matter for which the loan is required to decide the exact term of the redemption of each particular loan. In the case, however, of most of the loans raised by Metropolitan Borough Councils this discretion is, in the first instance, exercised by the London County Council."

There is a constant danger of local bodies becoming so captivated by the facilities for borrowing for their expenditure as to make this their normal procedure in all such cases and thus to load their successors in office or a succeeding generation with undue burdens. A particular peril is inherent in this principle in the method of borrowing for those assets which are liable to progressive standards and are thus subject to obsolescence before proper provision has been made for their cost. Thus we find that to-day we are still providing for the cost of schools entirely inadequate for present needs and for equipment which has been made obsolete by discoveries and inventions as may be illustrated in the sphere of electricity undertakings. For the types of assets which are normally liable to this principle local authorities are not permitted to borrow, or are required to redeem the loan within a very short period. Loans are normally permitted only for permanent works. To meet capital expenditure out of current revenue is economical in so far as it saves the additional cost of interest.

A continuous policy of borrowing for capital purposes also leads eventually to the illogical position of paying more in annual charges than by continually meeting such expenditure out of revenue in the first instance. Some local authorities have, therefore, decided to meet all such expenditure out of revenue or not to borrow for smaller items (e.g. £1,000), to meet capital costs annually up to a certain rate (e.g. 6d. in the £), and where borrowing eventually is adopted, to provide repayment within the shortest possible period.

On the other hand, some of our ancient boroughs were so shortsighted and niggardly in their dealings that, rather than



raise a rate or borrow for their requirements, they sold properties, often of a reproductive character and of increasing values, which would have produced for them valuable modern assets and estates. Recourse does not seem to have been made to borrowing until the great necessities of the eighteenth century made it obligatory.

The net amount of outstanding loans of local authorities in England and Wales in 1935-36 amounted to the comprehensive sum of £1,352,400,000 to which it had grown from £93,000,000 in 1874-5. It is quite unpretentious, however, when compared with the National Debt of £7,800,000,000 for that year. The latter is also the result of expenditure largely unproductive and for which no tangible assets exist. The debt of local authorities is secured largely upon the estimable assets of their trading department (Electricity, Tramways, Waterworks, Gasworks, etc.) which are valuable revenue-producing services, conferring lasting benefits upon the community.

### GENERAL BORROWING POWERS

The Local Government Act, 1933, Part IV, contains in a consolidated and amended form, the provisions applying when local authorities desire to borrow. Certain provisions in previous legislation are left outstanding such as Sects. 234 to 243 of the Public Health Act, 1875. These are dealt with later.

All moneys borrowed by a local authority, whether before or after the commencement of the Act, are charged indifferently on all the revenues of the authority, and from the passing of the Local Government Act, 1933, rank equally without any priority. (Sect. 197.)

### PURPOSES FOR WHICH MONEY MAY BE BORROWED

The purposes are set out in Sect. 195 of the Local Government Act, 1933, as follows—

- (a) Acquiring authorized land.
- (b) Erecting authorized buildings.
- (c) Executing permanent work, providing plant, or other purposes the cost of which in the opinion of the sanctioning authority ought to be spread over a term of years.
- (d) Authorized loans to a Parish Council by a County Council.
- (e) Under authority of any enactment or statutory order.
- (f) Compensation of officers. (Sect. 150 (6).)
- (g) Financial adjustments. (Sect. 151 (5).)

Under the Public Health Act, 1925, county councils are authorized to borrow for the purpose of prescribing improvement lines for widening streets. (Sect. 34.)

County and county borough councils may borrow to make advances to any person in aid of colonization or to assist in the emigration of inhabitants with a guarantee for repayments from a local authority or a colonial government. (Local Government Act, 1888, Sect. 69 (1) (d).)

Many of the larger authorities obtain special powers under Private Acts, e.g. Mersey Tunnel Act, 1925, or under Provisional Orders, duly confirmed, under statutory authority.

### PRIVATE IMPROVEMENTS

Money may be borrowed for private improvement schemes or expenses chargeable only on part of their district, the repayment of which must be made out of charges levied on the owners of improved property or rates levied only on that part of their district. (Public Health Act, 1875, Sect. 234.) This Section is now repealed except so far as material to unrepealed enactments.

### PUBLIC HEALTH ACT, 1936

This gives sanitary authorities, with the sanction of the Ministry of Health for the purpose of defraying any costs, charges and expenses incurred or to be incurred by them in the execution of the Sanitary Acts, or that Act, or for the purpose of discharging any loans contracted under the Sanitary Acts, or that Act, power to borrow any sums of money necessary for defraying any such costs, charges and expenses, and for discharging any such loans. (Sect. 307.)

Power is given to borrow on the credit of sewage land and plant by mortgage thereof. No sanction is required for this purpose. (Sect. 310.) The loan must be repaid within 30 years.

### HOUSING ACT, 1936

The purposes for which local authorities may borrow and the manner of borrowing are set out as follows—

Housing authorities, generally, Sect. 118.

London authorities, Sect. 119.

County Councils and Mental Hospital Boards, Sect. 120.

Operations outside the authorities own area, Sect. 121.

Issue of Local Housing Bonds, Sect. 122.

From the Public Works Loan Commissioners, Sect. 123.

From Housing Repairs and Equalisation Accounts, Sect. 133.

### PERIODS OF REPAYMENT

In order to prevent the establishment of permanent local debt, statutes which confer borrowing powers usually specify a maximum period within which provision must be made for

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the amount necessary to repay the loans raised. The maximum period for repayment of borrowed money is normally 60 years. A maximum of 80 years is allowed for the acquisition of land under the Small Holdings and Allotments Acts, 1908 to 1931, the Housing (Rural Workers) Acts, 1926, 1931, and 1938, and under the Housing Act, 1936, other than County Council loans for grants, loans, or capital subscriptions to public utility societies, in which case the period is 50 years. Under the Tramways Act, 1870, the maximum period is 30 years. Loans for purposes of Part V of the Road Traffic Act, 1930, are repayable within such period as the Minister of Transport may sanction. It does not follow that the local authority will obtain the maximum period allowed, because a discretion is left to the sanctioning Government Department to fix the period within the maximum, after considering the merits of each application. In the case of most of the loans raised by the Metropolitan Borough Councils this discretion is, in the first instance, exercised by the London County Council.

The maximum periods are seldom allowed except for land. Typical examples of periods granted are shown in the following table—

Purpose	Asset	Term of Years
1. Education . . . .	Land	60
" . . . .	Schools	50
" . . . .	Furniture	10-15
2. Electricity . . . .	Land	60
" . . . .	Buildings	40
" . . . .	Mains	25
" . . . .	Plant	20
" . . . .	Equipment	10
3. Housing . . . .	Land	80
" . . . .	Houses	60
" . . . .	Sewers	30
" . . . .	Roads	20
4. Tramways . . . .	Purchase	30
" . . . .	Buildings	30
" . . . .	Cars	15

Under the Local Government Act, 1933, Sect. 215, local authorities may borrow to meet their expenses pending receipt of rates, precept levies, or other revenues. Under Sect. 216, local authorities may re-borrow to pay off loans, providing the period

of the original loan is not exceeded. A new loan raised to pay off the balance of an old loan may not be raised for a longer period than the unexpired period of the old loan without the consent of the Minister and never for longer than the maximum period allowed from the date of the original loan. The Local Government Superannuation Act, 1937, and the Fire Brigades Act, 1938, authorize administering authorities to use the money which they have in their Funds for any statutory borrowing powers.

### BORROWING WITHOUT SANCTION

There are very exceptional circumstances under which some local authorities may borrow without the sanction of a central department, viz—

1. Under powers conferred by Private Act.
2. Upon security of Sewage Works and Lands.  
Public Health Act, 1936, Sect. 310.
3. Reborrowing for unexpired portion of original sanction.  
Local Government Act, 1933, Sect. 216.
4. Financial adjustments.<sup>1</sup>  
Local Government Act, 1933, Sect. 151.
5. Under Diseases of Animals Act, 1894, Sect. 42.<sup>1</sup>
6. By the City of London.
7. Working Balances under the Local Government Act, 1933, Sect. 215.
8. By a County Council for lending to a Parish Council.  
Local Government Act, 1933, Sect. 195.

### LIMITATIONS ON BORROWINGS

Certain enactments have from time to time restricted borrowing powers to a specified proportion of the assessable or rateable value of the area. These limits were removed by the Local Government Act, 1929, Sect. 74 (1), except borrowing for emigration or colonization by a county or county borough council, in which case the net debt outstanding must not exceed the amount of one-tenth of the rateable value without the consent of the Minister of Health.

In other instances limits are made by restrictions upon the rate poundage which may be levied in any year, and thus upon the annual loan charges.

Parish Meetings are limited to a rate of 8d. in the £, *including* expenses incurred under the Adoptive Acts, or such higher rate as the Minister of Health may allow. (Local Government Act, 1933, Sect. 193 (5).)

<sup>1</sup> Sanction to *period* of repayment required.

Parish Councils are limited to 8d. in the £ but *excluding* the Adoptive Acts, and allotments, or such higher rate as the Minister of Health may allow. (Local Government Act, 1933, Sect. 193 (3).)

Other Acts limiting rates are—

Burial Acts, 1852-1906 . . .	8d. in the £ for Parish Councils.
Mental Deficiency Act, 1913 . . .	Eight-ninths of 1d. for optional functions.
Health Resorts and Watering Places Act, 1921:	
Advertising Amenities . . .	1½d. in the £.
War Memorials Act, 1923 . . .	1½d. in the £ for parish councils
Allotments Act, 1925 . . .	1½d. in the £ for borough and urban district councils.
Public Health Act, 1925 . . .	1½d. in the £ for park entertainments but 2½d. in the £ with Minister's sanction. 1½d. in the £ for contribution to voluntary hospitals.
Local Authorities (Publicity) Act, 1931.	½d. in the £ .
Land Settlement Facilities Act, 1926 .	1½d. in the £.
Small Dwellings Acquisition Acts, 1899 to 1923	¾d. in the £ for county councils. 1½d. in the £ for other authorities.

The Local Government Act, 1929, increased by 33½ per cent or such higher percentage as the Minister of Health may in any special case allow, the maximum in force under any Act. Effect has been given to this provision in the above.

### SANCTIONS TO BORROW

Even where power is given to borrow, it is usually necessary to obtain the approval or sanction of a government department. Generally it is the Ministry of Health, but other departments sanction as shown below.

*Sanctioning Authority*  
Electricity Commissioners.  
Ministry of Transport.

*Purposes*  
Electricity Undertakings.  
Tramways and Light Railways.  
(Road Traffic Act, 1930, Part V)  
Agricultural Drainage.

Ministry of Agriculture and Fisheries.

In the case of Parish Councils the consent of the Parish Meeting and County Council must be obtained prior to and in addition to the approval of the Ministry of Health. No approval is required when a county council borrows to lend to a parish council.

As heretofore mentioned, the sanction of the central department may be obtained by issue of a Provisional Order, and

County, County Borough, Borough, Urban District, and Rural District Councils may seek powers and sanctions by Private Bill.

It is usual for the central sanctioning department to hold a local inquiry before giving its consent. Statements must be submitted to the central department giving particulars relating to the authority. These particulars usually include the following—

1. Amount of proposed loan.
2. Proposed period of repayment.
3. Area.
4. Population.
5. Produce of rate of 1d. in the £.
6. Rates levied during past (four) years.
7. Rateable value.
8. Existing debt.
9. Unused borrowing powers.
10. Margin of powers under restrictions.
11. If execution of works are necessary—
  - (a) Plans.
  - (b) Sections.
  - (c) Estimates.

## METHODS OF BORROWING

1. Mortgages.
2. National Savings Certificates.
3. Housing bonds.
4. Debentures.
5. Annuities.
6. Stock.
7. Utilization of sinking funds.
8. Bank overdraft.
9. Bills of exchange.
10. Municipal bank deposits.
11. Simple deposit notes.

Methods 1 to 8 are authorized by general legislation, mainly the Local Government Act, 1933. Special powers are required for Methods 9 and 10. Method 11 is not authorized.

**Mortgage of Rates and Revenues.** This is the oldest and still the most popular method of borrowing. It was the system adopted by the Improvement Commissioners of the eighteenth century. They were empowered to borrow by mortgage without central control, but when this method was adopted and continued under the Public Health Act, 1875, the Local Government Board were given supervisory functions. The Mortgage Deed in prescribed form, duly stamped and sealed, makes a temporary conveyance of certain property and is secured on all the revenues by way of security for the loan. Many advantages accrue under the

system of borrowing by mortgage. An appeal may be made to local civic patriotism to encourage citizens to invest surplus funds with their native town. The man of small resources finds a safe security which keeps his capital intact and secures its certain return. His dealings are made directly with the local authority, thus saving the charges of intermediaries. Loans falling due for repayment can be renewed at a saving in expense.

On the other hand, mortgages lack the negotiability of other securities. The capital is locked up for the term of the bond, unless subject to a notice clause, which, from the standpoint of the local authority, may create difficulties by a large and sudden demand for repayment. The period of the bond may be long or short, but may not exceed the period of the sanction. The amount may be as large as the sanction, or bonds of small denominations may be issued. Repayment may be by instalments or one sum at the end of the period. Borrowing by mortgage is the usual one authorized under general statutes. One-sum mortgages are sometimes arranged with bankers and insurance companies, and the work of registration, etc., greatly reduced. Borrowing by mortgage is a convenient form of raising money prior to a stock issue and until the money market supplies the opportunity to fund the debt at a lower rate of interest.

The mortgage must be by deed in prescribed form or in form to the like effect in accordance with the Local Government Act, 1933, Sect. 205. Forms of mortgages and transfers have been prescribed by the Minister of Health in the Local Government (Forms of Mortgages and Transfers) Regulations, 1934. The Public Works Loans Acts, 1875 to 1946, prescribe the form of mortgages for loans raised under those Acts.

The clerk of a local authority is required to keep a Register of Mortgages which must be open to public inspection without charge. (Local Government Act, 1933, Sect. 207.)

Provided the amount in default to be not less than £1,000 application may be made to the High Court for the appointment of a Receiver upon default by the local authority in payment of principal or interest. Lenders are now relieved from inquiring whether the borrowing of money was legal or regular or whether the money raised was properly applied and they are not prejudiced by any illegality or irregularity or the misappropriation or non-application of such money. Borrowing by mortgage is the only method authorized for Parish Councils.

#### **PUBLIC WORKS LOAN BOARD**

Borrowing from the Public Works Loan Commissioners is a method of borrowing by mortgage. The Board is the successor

of the Exchequer Commissioners set up in 1817 to issue Exchequer Bills upon government security in order to provide money to lend to local authorities for the execution of public works. The Board was set up under the provisions of the Public Works Loans Act, 1875, to meet the demands of the new impulse given to public health administration. The Public Works Loans Act, 1946, provides for the Board to be appointed by the Crown instead of by Act of Parliament. They are twelve in number appointed for four years with three retiring each year. The Commissioners issue Local Loans Stock upon the national credit. The Commissioners advance money on approved security—

- (i) to the smaller local authorities on the security of rates, for sanitary works, housing, small holdings, allotments, etc. ;
- (ii) to others, including housing associations, on security of property for land, works, and buildings, on the recommendation of the Ministry of Health ;

thus giving them the benefit of the lower interest they pay. The rate of interest charged to local bodies is fixed by Treasury Minute. Fees, at a rate decreasing with the amount borrowed, stamp duties and expenses, are charged against the local authority.

It is customary, in normal times, to lend only to local authorities with a rateable value under £200,000. The larger authorities can borrow as cheaply and sometimes more cheaply themselves. The chief purposes and periods of repayment are—

Allotments	.	.	.	50 years
Burials	.	.	.	30 "
Housing	.	.	.	50 "
Sanitation	.	.	.	50 "

A loan granted to be repaid within a period less than the full period may be extended to a period not exceeding the maximum if the Commissioners consider that repayment with interest is fully secured. Regard will be had to the durability of the work.

A premium is payable upon premature repayment of sums borrowed since 1st April, 1916, except in respect of Small Dwellings loans and under Sects. 92 and 123 of the Housing Act, 1936.

The Board reports annually to Parliament.

As part of the post-war financial policy the Local Authorities Loans Act, 1945, requires all local authorities to obtain their loans from the Public Works Loan Board for a period of five years (see page 730).

## SHARE OF NATIONAL SAVING CERTIFICATES PROCEEDS

The Treasury is authorized to enter into arrangements with



any local authority whereby one-half of the proceeds of the Sales of National Savings Certificates in the area of the local authority may be advanced to the local authority for municipal purposes. The local authority is thereby interested in the advertising and extension of the movement. This method was started in October, 1920, under powers conferred by the Finance Act, 1920, Sect. 59, to assist in the financing of housing schemes, but was extended the following year to all purposes for which the Public Works Loan Commissioners may lend. The process is identical with borrowing under the Public Works Loans Act, 1875, but is not restricted to the smaller authorities.

### HOUSING BONDS

The Public Authorities and Bodies (Loans) Act, 1916, empowered local authorities to borrow by means of bearer securities with a view to assisting war-time finance. The Act has been repealed by the Local Government Act, 1933.

To help forward the borrowing of the enormous requirements of post-war housing these special facilities were made permanent by the Housing (Additional Powers) Act, 1919, to enable local authorities to issue Local Bonds with exceptional privileges attached thereto. Housing Bonds are now issued under the Housing Act, 1936, for a period of not less than five years, and in denominations of £5, £10, £20, and £100, and multiples thereof.

Interest on holdings not exceeding £100 may be paid without deduction of income tax at the source. The Treasury is authorized to fix rates of interest. The Bonds are secured upon *all* the rates, properties, and revenues of the local authority. The usual necessity for sealing is dispensed with. Mortgages granted after 1919 by any authority authorized to issue local bonds are raised to the status of trustee securities by the Trustee Act, 1925, Sect. 1 (*p*), thus opening a wider field of opportunity for investments with the authority. It is understood that stock issued by a municipal corporation will be a trustee security only if the population exceeds 50,000 in accordance with the Trustee Act, 1925, Sect. 1 (*m*). To gain this privilege Bonds need not have been actually issued, so long as the authority to issue has been obtained.

### DEBENTURES

Any authority empowered to levy a rate or precept is authorized to issue Debentures and Annuity Certificates under the Local Loans Acts, 1875 and 1885. A Debenture is a mortgage of the local rates. Debenture Stock may also be issued, but only if the authority has power under some separate provisions, a

stipulation fatal to the wide operation of its facilities. There are other limitations to its utility. Discount and expenses of issue cannot be included in the nominal capital sum, and borrowing powers are lost thereby. The Acts provided that loans should rank in priority of date but this has been repealed by the Local Government Act, 1933, Sect. 197 (1), and all money borrowed after the passing of that Act by a local authority is now charged indifferently on all the revenue of a local authority. A debenture issued by a County Council must not be for less than £5.

No provision is made for reborrowing, and the sinking fund provisions are faulty. Notwithstanding these restrictions the City of London issues Stock under its provisions.

The Trustees Securities Committee, 1928, recommended the repeal of the provisions of this Act but they have been left outstanding by the Local Government Act, 1933.

### ANNUITIES

Borrowing by means of annuities consists of the payment of a fixed annual sum to the annuitant. Annuity certificates may be terminable or perpetual. The former are limited to a certain term of years. The latter are granted in perpetuity, and can be redeemed only by repurchase, usually at great cost. This method was popular a century ago in providing an attractive method for securing the surrender of the rights and interests of owners and shareholders in works of public utility, such as water and gas undertakings which a local authority were acquiring. It was a method sanctioned under the Local Loans Act, 1875, but it has become obsolete through more modern methods. Under the Statute mentioned, Annuity Certificates must not be for a sum less than £3.

### STOCK

The Metropolitan Board of Works (precursor of the London County Council) was the first local body to obtain powers to raise money by the issue of Stock (1869). Manchester followed under Private Act in 1872. When County Councils were established by the Local Government Act, 1888, they were empowered to issue Stock. A series of Stock Regulations (1891, 1897, 1901, 1921, and 1932) were issued by the central authorities. By the Public Health Acts (Amendment) Act, 1890, the power was extended to *Urban* Sanitary Authorities, and a similar, but distinct, code of Regulations issued.

Under the provisions of the Local Government Act, 1933, Sect. 196 (6), *any* local authority except a Parish Council having power to borrow may raise money by the issue of Stock subject

to the consent of the Minister of Health. This enables Rural District Councils now to issue Stock. Metropolitan Borough Councils are not empowered to issue Stock. The Local Authorities (Stock) Regulations, 1934, have now been issued by the Ministry of Health. These supersede former Regulations and apply to all authorities, including County Councils.

A local authority must first have statutory power to issue Stock. This may be under a Local Act, or under the Local Government Act, 1933. If they have the necessary authority they may proceed under the provisions of the Local Loans Act, 1875, or the Stock Regulations. Under the Stock Regulations a Consent Order from the Minister of Health is necessary for the creation of Stock. Except in those rare instances where it is not necessary, sanction to borrow must first have been obtained and the period or unexpired period of the sanction must be at least as long as the minimum period within which the Stock is to be repaid. The Consent Order authorizes the issue, specifies the sanctions concerned, fixes the rate of interest and date of redemption. The Sinking Fund contributions are stipulated, and it is stated whether the Fund is to be accumulating or non-accumulating.

Special permission is required to issue at a price less than 95 per cent. More than one class of Stock may be issued, but all issues of any one class must be upon the same terms except price of issue. Expenses of issue and discount may be added to the sanction. The Stock may exist for a longer period than the sanction so long as redemption provisions are maintained. The security of Stock is *all* the rates, properties, and revenues of the authority, but charges may be allocated to the appropriate revenue accounts. Separate accounts must be kept of each borrowing power exercised, and a separate sinking fund maintained for each. Stock Certificates may be Nominal or Bearer. Sinking Funds may now be utilized for new borrowing powers, and thus the expense and labour of new issues economized. Annual returns in the prescribed form must be made to the Minister of Health. A decision has to be made whether the issue is to be public or private. In the latter case the banker or an issuing house takes the whole issue at a fixed price and sells at the best price obtainable. The Stock Exchange will not deal with private stock issues exceeding £250,000.

A resolution would be passed creating the Stock and fixing the period (maximum 60 years). The price of issue would also be decided upon. Another decision would be required as to whether the Stock was to be registered or inscribed. The title of the former would be the deed or certificate issued. With inscribed Stock the evidence of title is the entry in the Registrar's books.

The local authority may make the bankers (usually the Bank of England) their registrar, or may deal with the Stock themselves. The issue may also be floated by the local authority itself or placed in the hands of an issuing company (usual charge  $\frac{1}{4}$  per cent). Underwriting (usual charge 1 per cent) prevents the consequences of having any undersubscribed part of the issue falling on the local authority. Stamp Duty is payable at  $\frac{1}{8}$  per cent, and Loan Capital Duty 2s. 6d. per cent. A local authority may agree to a composition for Transfer Duty at 2s. per cent. A prospectus would be published giving full details of the terms of issue, price, period, rate of interest, dates of payment of calls and of dividends, and all necessary facts about the local authority. The intention to offer Stock for public subscription would be advertised, and the place and date stated for the acceptance of applications for allotment. Letters of Allotment or Regret would be issued subsequently, and it is desirable to eliminate "stags," if possible. In the case of boroughs with a population of 50,000, and all counties, Stock issues are trustee securities.

### ADVANTAGES AND DISADVANTAGES OF STOCK

Borrowing by the issue of Stock facilitates the raising of large sums in one operation and at a comparatively low rate of interest. The borrowing may be for a long term, and there can be no sudden demand for repayment as with certain mortgages. The use of Sinking Funds for reborrowing minimizes work, and is economical. The capital of the holder is not locked up, as with a mortgage, for Stock is freely saleable on the market. On the other hand, the initial cost is heavy, although this may be saved ultimately in interest charges. An issue of Stock is a risky and highly technical operation, and its failure reacts upon the reputation of the authority. Another difficulty is the constant necessity of seeking channels of lucrative and secure investments for Sinking Fund accumulations unless these can be utilized in lieu of new borrowings. Then, again, stock issues are changing in their character. Thirty years ago it was quite the custom to issue stock for sixty years. A flotation was then worth the expense and trouble. Nowadays, stock issues are often for twenty or thirty years, and it is doubtful whether they are to any great extent an economical method of obtaining money.

### USE OF SINKING AND REDEMPTION FUNDS

When local authorities borrow by an issue of stock the Regulations require that a Sinking Fund shall be created to make adequate provision for the redemption of the stock within the prescribed period for the borrowing powers exercised. The

"prescribed periods" vary with the nature of the capital works and may be for shorter or longer periods than that for which the stock is issued. Stock may be cancelled at any time out of this fund. So long as the provision is made, the stock need not be actually repaid. There are thus considerable sums in these funds, and they need not be idle, but may be invested in certain securities. For many years it was considered inadvisable for a local authority to invest these funds in their own securities, but this trepidation has now been overcome and, provided the proper sanction has been obtained, a local authority may now utilize its own Sinking Funds in place of new borrowings. A Select Committee reported in 1909 that the system was unobjectionable if properly safeguarded and that it afforded an economical and convenient method of borrowing. For superannuation fund purposes it is authorized without private legislation. If a local authority "pools" its various funds, considerable amounts are set free for use as new capital in this way. Expenses of borrowing, such as stamp duties, are avoided.

### BANK OVERDRAFTS

Local authorities have not the unfettered power of private depositors to overdraw their banking accounts. Several legal decisions have been made upon this issue. The *Tenby Case* (*A.-G. v. de Winton*, [1906] 2 Ch. 106) decided that not only was the overdraft illegal, but also the payment of interest thereon. The *Tottenham Case*, 1909, decided that the *repayment* of an illegal overdraft was also illegal. Post-war conditions greatly hampered local authorities because of their inability to meet their larger liabilities before current revenue started to flow in, and their inability to create a fund out of previous rates or borrow by overdraft. Hence the Local Authorities (Financial Provisions) Act, 1921, was passed to legalize an overdraft for a temporary working balance generally, as had been provided for education in an Act of 1903. Sanction of the Ministry of Health was required, and the loan had to be repaid within the same financial year. The Rating and Valuation Act, 1925, Sect. 12 (2), empowered the treasurer of a local authority to make temporary advances pending the receipts of rates and legalized the payment of interest thereon. Where the local authority made a banker its treasurer this provision legalized an overdraft in such cases.

The provisions were repealed by the Local Government Act, 1933, which authorized a local authority to borrow by way of temporary loan, or overdraft, without consent of any sanctioning authority, any sums they require for a working balance pending the receipt of current revenue. (Sect. 215.)

The loan need not now be raised from the Treasurer. The expenditure must have been taken into account in the estimates made for the period. If a sanction is subsequently obtained, the period of the loan will operate from the raising of the overdraft and not from the raising of the loan.

### BILLS OF EXCHANGE

Local authorities have no general power to issue money bills or promissory notes. The Treasury frequently floats an issue of Treasury bills to "tide over" pending the receipt of money by taxation. Money bills are promises to pay a certain sum at a fixed date, and those who have recourse to this method sell bills of fixed denominations at the best figure they can obtain. The exercise of this power requires considerable knowledge of the money market and the technicalities of public finance, and would be a considerable danger if in general use in unskilled hands. Great danger exists because loans raised in this manner are "unfunded," that is to say, secured, if at all, upon a security which may not be permanent. New bills may be floated to pay off a previous issue, and thus create a permanent unfunded debt. In the hands of the larger authorities this method has many advantages. Large sums may be obtained in a very short time and utilized in the interim until an issue of Stock or the receipt of ordinary revenues. It also prevents overborrowing for a lengthy period for purposes which cannot be precisely measured when first the money is required. When the debt is subsequently funded the balance can be repaid.

Special legislative sanction must be obtained to enable money bills to be issued. The London County Council and the Glasgow City Council were the pioneers of this method in 1896. Other large municipalities, e.g. Liverpool, have subsequently followed suit, but Parliament is very loath to extend the power.

The Bank of England have recently revised the conditions under which they will deal with the issue of these Bills. They must not be for a longer period than six months. There must be a lapse of thirty days between the maturity of one issue and a new issue. Seven days' notice must be given of an intention to issue and the results of the flotation must be published within three days.

### MUNICIPAL BANK DEPOSITS

In order to attract War Loans the City of Birmingham commenced to accept loans on deposit in 1916. In three years 30,000 depositors had deposited £500,000. The success of the experiment encouraged the city authorities to continue the

process for civic purposes, and the powers were obtained by special Act in 1919. The Birmingham Municipal Bank has proved an unqualified success. One-half of the outstanding deposits are invested in trustee securities, including War Stock, the remaining moiety being used for general municipal purposes.

As a comparatively low rate of interest is paid, a cheap loan is obtained at a low cost. A Bill introduced by Mr. Scurr in 1926 to make the power general failed to pass the House of Commons, and a Departmental Committee reported unfavourably to its extension. Although Birkenhead and Cardiff obtained these powers in 1930 they have not put them into operation because, unlike Birmingham, they will be subject to Government Regulations. Glasgow was refused powers in 1935. The Joint-stock Banks and Trustee Savings Banks oppose the practice as an invasion into their rights and functions. The Post Office Savings Bank also provides almost identical facilities to depositors. Barnsley has recently adopted the Scottish method of making members of the Council the Trustees of a Trustee Savings Bank.

### **SIMPLE DEPOSIT NOTES**

Some local authorities accept loans upon the issue of a Deposit Receipt. The only legal sanction appears to be that the Finance Act, 1899, Sect. 8, expressly excludes from stamp duty for a loan on capital "any County Council or municipal corporation bills repayable not later than twelve months from their date or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months." An undertaking is usually given to exchange the receipt for a duly executed mortgage deed upon request.

### **INTEREST RATES**

The rate of interest payable on loans in normal times is affected by the method of borrowing. Short-term loans such as Bills are cheaper than long-term loans such as Stock. Similarly, a higher rate is payable for long-term mortgages compared to short-term mortgages.

### **REPAYMENT OF LOANS**

Although joint-stock companies are under no liability to repay borrowed capital, local authorities are not permitted to maintain a permanent debt liability, but have to make provision for repayment. The conditions of the two types of bodies make comparisons ineffective. The principle is a very good one for local authority finance, as it makes municipal investments so very secure. In 1902 a Select Committee on Repayment of Loans (Grant-Lawson Committee) was appointed and reported in favour

of the practice of redemption. It was also pointed out that the method of repayment, as well as the type of asset, was an important factor in fixing the period of repayment.

PURPOSE	Counties	County Boroughs	Non-county Boroughs	Urban Districts	Rural Districts	Parishes
Allotments . . . . .		x	x	x		x
Ambulances . . . . .	x	x	x	x	x	
Art galleries . . . . .		x	x	x		x
Baths and wash-houses . . . . .	x	x	x	x	x	x
Bridges . . . . .	x	x	x	x		
Burial grounds and cemeteries . . . . .		x	x	x	x	x
Debt consolidation . . . . .	x	x				
Diseases of animals . . . . .	x	x	c			
Education . . . . .	x	x				
Electric lighting . . . . .		x	x	x	x	
Emigration . . . . .	x	x	x			
Esplanades . . . . .		x	x	x		
Financial adjustments . . . . .	x	x	x	x	x	x
Fire prevention . . . . .		x	x	x	x	
Gasworks . . . . .		x	x	x		
Gymnasia . . . . .	x	x	x	x	x	x
Housing and planning . . . . .	x	x	x	x	x	
Inebriates homes . . . . .	x	x	x			
Isolation hospitals . . . . .	x	x	x	x	x	
Land and buildings (authorized) . . . . .	x	x	x	x	x	x
Libraries . . . . .	x	x	x	x		x
Lighting . . . . .		x	x	x	x	x
Light railways . . . . .	x	x	x	x	x	
Markets . . . . .		x	x	x	x	
Mental deficiency . . . . .	x	x				
Museums . . . . .	x	x	x	x		x
Open spaces . . . . .	x	x	x	x	x	
Parks and gardens . . . . .		x	x	x	x	x
Police stations . . . . .	x	x				
Public assistance . . . . .	x	x				
Public health . . . . .	x	x	x	x	x	
Public improvements . . . . .		x	x	x		x
Private street works . . . . .	x	x	x	x		
Reborrowing . . . . .	x	x	x	x	x	x
Roads . . . . .	x	x	x	x		
Small holdings . . . . .	x	x				
Small dwelling acquisition . . . . .	x	x	x	x	x	
Tramways . . . . .	x	x	x	x		x
Water supply . . . . .		x	x	x	x	
Weighing machines . . . . .	x	x	x	x	x	

c = certain only



## METHODS OF REPAYMENT

The method of borrowing will generally fix the system of repayment. Bills of Exchange must be repaid in one sum at maturity; bank overdrafts are automatically repaid by the receipt of revenue. Annuities automatically expire unless they are perpetual, in which case they can be redeemed only by purchase. Deposits are repayable on demand, but may be repaid out of other deposits.

For the more usual methods of borrowing the principal modes of repayment are—

1. Instalment System.
2. Terminal Annuity System.
3. Sinking Fund System.
4. Partly by one of the above methods and partly by another or others of them.

THE FIXED INSTALMENT SYSTEM of repayment consists of equal instalments of principal, together with interest on the outstanding balance. The revenue charges decrease with each payment. It has the great advantages of simplicity of accounting and cheapness. The charges to revenue are heavier in the earlier years. It is therefore advantageous where an asset is purchased which will wear well during the initial period, but becomes a charge on revenue for repairs later. It is not so satisfactory if the asset is non-remunerative in the earlier years. Lenders, as a rule, do not like repayments in varying amounts as is necessary by this method.

THE TERMINAL ANNUITY SYSTEM repays the loan by equal instalments of principal and interest combined. The periodical payments, and therefore the revenue charges, are equal in amount, but principal repayments increase and interest decreases throughout the period. Smaller authorities favour this method because of its simplicity and the uniform periodical payments.

THE SINKING FUND SYSTEM provides for the payment of instalments into a fund which will provide the requisite sum at the end of the loan period to redeem the debt. The name is borrowed from the system adopted by the Government for the reduction of the National Debt. Sinking Funds may be—

1. Non-accumulating.
2. Accumulating.

NON-ACCUMULATING SINKING FUNDS are simple in operation. The amount of the loan is divided by the period, and the quotient is the annual contribution to the fund to redeem the debt at the end of the period. Any interest on the investment of the fund, in this case, goes to revenue.

THE ACCUMULATING SINKING FUND is more technical. The annual contribution to the fund is the amount which, together

with compound interest on the accumulated balance, will provide a sufficient sum to redeem the loan. The interest or an equivalent sum is therefore paid into the fund. This is the method prescribed in the Stock Regulations for the repayment of Stock.

The amount in a sinking fund may be utilized for new capital purposes in lieu of new borrowings. Stock may be purchased for cancellation out of the fund whenever the opportunity occurs and the market is favourable. The amount standing to the credit of the fund must be invested in statutory securities. A difficulty to be faced is the necessity to find secure and lucrative investments for the accumulations. Dealings in investments are highly technical, and may lead to loss unless carefully watched and handled.

The loan sanctioning authority may authorize conditionally or otherwise the suspension of payments into a sinking fund in respect of money expended for constructional purposes of a revenue-producing undertaking during the unremunerative period, or five years, whichever is shorter.

An Order has been issued by the Minister of Health with Circular 1443 fixing 3 per cent as the prescribed rate for interest accumulations to a Sinking Fund under the Local Government Act, 1933. The Minister advocates the use of the same rate for other Sinking Funds.

An outstanding loan may be paid off at any time out of a sinking fund, providing, in the case of an accumulating fund, that a sum equivalent to the amount of interest which the amount paid off would have brought in as interest is paid into the fund annually.

### CONSOLIDATION OF LOANS

The keeping of separate funds for their numerous loans becomes very burdensome to the larger authorities. Amalgamation of them all into one comprehensive fund is called consolidation of loans. There are no general powers for this purpose, and it is necessary to obtain power by special Act, as Torquay did in 1923. Loans are not earmarked to particular borrowing powers and interest charges are equalized by calculating an average rate based on the loans outstanding, having regard to current rates. Departments of a local authority welcome the scheme when the average rates are lower than current rates, but dislike the necessity of having to pay higher rates. To avoid this difficulty whilst the average rate must be charged to the account, the current rate may be used for costing purposes. It is anticipated that general powers, on the lines of the Leeds Scheme, 1926, will be extended to the larger authorities in the near future. It is a great boon to abolish numerous separate Sinking Funds for one consolidated fund.

The principal purposes for which the various local authorities may borrow are shown on page 727.

## RETURNS AS TO LOANS

The practice previously common under local Acts of requiring returns as to loans issued has been extended generally to all local authorities under Sect. 199 of the Local Government Act, 1933. The clerk must make this return to the Minister of Health within one month after request. A fine of £20 is incurred in default and the return is enforceable by mandamus. An annual return is made. The Minister may direct by order that a local authority in default of any statutory requirement shall carry out those requirements, such order being enforceable by mandamus.

The provisions previously applicable only to County Councils requiring, where loans are raised for a particular account, for the service of the loan to be charged to that account, has been made applicable to all authorities. Loans raised, but not required for the purpose for which borrowed, may be applied to any capital purpose with consent of the Minister of Health, subject to any conditions he may impose. This does not apply to loans from the Public Works Loan Commissioners.

## THE LOCAL AUTHORITIES' LOANS ACT, 1945

As part of the Government's post-war borrowing policy this Act provides for all local authorities to obtain their loans through the Public Works Loan Commissioners although Treasury Regulations may prescribe exemptions by directions as to sources, manner and purposes of borrowing. The Act will operate until the 31st December, 1950, unless Parliament decides otherwise. The Capital Issues Committee set up to regulate borrowing during the war will decide the question of priorities for loans. One effect of the Act will be to equalize interest rates for all local authorities. The rates of interest are, not exceeding 5 years,  $1\frac{1}{2}$  per cent; 5 years to 15 years, 2 per cent; over 30 years,  $2\frac{1}{2}$  per cent. The Treasury Regulations prescribe the amount of the fees to be paid to the Commissioners and a charge of about 4s. per cent on the amount borrowed will be made to cover administrative costs. The proceeds of loans may be carried to consolidated loans funds or loans pools of local authorities providing the statutory interest rates are charged. Money standing to the credit of internal funds may be utilized in place of borrowing (e.g. sinking, reserve, repairs or pension funds), although it is not essential that such funds should be exhausted before new loans are raised. Loans existing at the time the Act operates may be renewed when due for repayment.

**THE INVESTMENT (CONTROL AND GUARANTIES) ACT, 1946**

This Act regulates all borrowing of money. The Capital Issues Committee and the Public Works Loan Board are continued. Consent of the Treasury is necessary to borrow money. Exemptions include loans up to £10,000 from the same source in any one year and borrowing by a local authority for temporary purposes pending the receipt of revenues, providing the expenditure is not for capital purposes and is repayable not later than one month after the end of the accounting period. The amount outstanding for this latter purpose must not at any one time exceed one-half of the total income for the accounting period.

Local authority borrowings will be dealt with by the Treasury direct, and not, as hitherto, by the Capital Issues Committee.

## CHAPTER XXVIII

### RATING AND VALUATION

TAXES are a portion of private wealth exacted compulsorily from individuals by the State to meet expenditure necessary to carry out the functions of government.

Rates are a charge levied compulsorily by a local authority, the proceeds of which are applicable to public local purposes. They are leviable on the basis of an assessment made normally upon the occupier in respect of the net annual value of occupied property. The present system of rating is based theoretically on the assumed annual letting value of real property, and does not take into account personal property or income. Originally personal as well as real property was rateable, but personal property was exempted by the Poor Rate Exemption Act, 1840.

#### THE OVERSEER OF THE POOR

The Overseer of the Poor was the person or authority responsible for the making, collection, and recovery of the Poor Rate prior to the operation of the Rating and Valuation Act, 1925. The office dated from 1551, and became a permanent feature of local government in 1601. In 1834 the duties of the Overseers with reference to the administration of Poor Relief, which they had administered for two centuries, were transferred to the Board of Guardians. On the 1st April, 1927, the offices of Overseer and Assistant Overseer were abolished under Sect. 62 of the Rating and Valuation Act, 1925.

#### HISTORICAL

Since the Union Assessment Committee Act, 1862, several Government Bills were introduced into Parliament (1867, 1873, 1876, 1877, 1878, 1879, and 1904) for the purpose of securing a uniform rating valuation, but none of these Bills was successful. The Act of 1925 was foreshadowed by the Reports of the Royal Commission on Local Taxation of 1898-1901 (the Balfour of Burleigh Report), and the Departmental Committee on Local Taxation of 1912-14 (the Kempe Report). Indeed its history may be taken back to Goschen's Act, which conferred on London the Valuation (Metropolis) Act, 1869.

In 1923 the Government prepared a Draft Bill which was the subject of considerable criticism. The Bill proposed the abolition of the (1) Assessment Committees of Poor Law Unions; (2) Overseers and Assistant Overseers; (3) the Parish as a rating

authority; (4) County Rate Basis Committees; (5) the Income Tax Commissioners so far as they settle assessments for Schedule "A" and Inhabited House Duty; (6) the collection through the Guardians of the County Rate. Some important alterations in and omissions from the Bill were made before it finally reached the Statute Book as the Rating and Valuation Act, 1925.

### RATING AND VALUATION ACT, 1925

THE PRINCIPAL OBJECTS OF THE ACT were: (1) to simplify the methods of making and raising rates; (2) to promote uniformity in valuation; (3) to amend the law respecting the valuation of machinery. The Act was also intended to pave the way for further reforms, tending generally to promote efficiency and economy in local administration, and to extend a greater measure of equity and justice in the distribution of local burdens.

The Act differs materially not only from the draft circulated in 1923, but from the Bill as introduced. Originally, the Bill contained provisions by which the valuation lists made under it might be utilized for the purposes of Schedule "A" Income Tax, but these disappeared in deference to the opposition they provoked throughout the country. The Inland Revenue administration finds no representation in the Act, though included in the Bill with a view to securing uniformity between one county and another, and between one part of the country and another. (See Sect. 43.) The Act attempts to secure this uniformity by means of a Central Valuation Committee, with powers as to holding conferences, and making representations to the Minister of Health.

The Rating and Valuation Act, 1925, is in three parts: I, Rating; II, Valuation; and III, General. There are seventy sections and eight schedules. It is intitled: "An Act to simplify and amend the law with respect to the making and collection of rates by the consolidation of rates and otherwise, to promote uniformity in the valuation of property for the purpose of rates, to amend the law with respect to the valuation of machinery and certain other classes of properties, and for other purposes incidental to or connected with the matters aforesaid."

The Act is largely concerned with effecting changes in the administrative machinery of the then existing law relating to the making and levying of rates, and the valuation of property for rating purposes. To this end the historic office of overseer of the poor was abolished; the admittedly misleading term of "poor rate" disappeared, the parish ceased to be the statutory unit of rating; and the long association of assessment work with the Poor Law was also ended. It was the declared policy of the Government that these changes were the forerunners of other

legislation for the reform of the Poor Law itself, which changes were effected by the Local Government Act, 1929.

The Eighth Schedule contains a list of 46 enactments, covering a period of over 300 years—from the Great Act of 43 Elizabeth, 1601, to the Agricultural Rates Act of 1923—which were repealed in whole or in part. But the principles of valuation were largely unaffected, as also to a lesser extent the law relating to the actual collection of the rates.

## GENERAL SCHEME OF THE ACT

The provisions of the Act may be summarized as follows—

(i) To transfer all powers and duties in relation to the making and collection of rates from overseers to the councils of county boroughs, non-county boroughs, urban districts, and rural districts—who are called “rating authorities,” whilst their boroughs and districts become the “rating areas”;

(ii) to simplify the procedure governing the making and collection of rates and issuing of precepts, and, in particular, to provide for the consolidation of rates in urban areas, with consequential simplification of accounts;

(iii) to provide for the appointment of new assessment authorities acting for areas consisting of one or more entire rating areas; and

(iv) to promote uniformity of valuation, more particularly—

(a) Through the action of county valuation committees and a central valuation committee;

(b) by introducing the principle of quinquennial revision of valuation lists; and

(c) by enabling rating and assessment authorities to require returns from owners and occupiers of property, and prescribing a uniform scale of deduction to be made from the gross value of houses, land, and buildings in order to arrive at the rateable value.

(v) In addition the Act as from 1st April, 1928 or 1929—

(a) Extended to agricultural buildings the 75 per cent relief from rates previously enjoyed temporarily by agricultural land, and made permanent by the Act; the combined effect of the Local Government Act, 1929, and the Agricultural Rates Act, 1929, is that agricultural land and buildings were completely de-rated as from 1st April, 1929; and

(b) effected the de-rating of certain kinds of machinery and plant by specifying what classes are to be treated as forming part of the hereditament; all other machinery and plant are to be disregarded in making valuations.

## THE AUTHORITIES UNDER THE ACT

The authorities under the Act are: (1) The rating authorities (urban and rural) and their committees; (2) the assessment committees; (3) the county valuation committees; (4) the central valuation committee; (5) the Minister of Health.

## AMENDMENTS OF THE ACT

Since the passing of the Act, the two Acts of 1928, and the Local Government Act, 1929, the Agricultural Rates Act, 1929, and the Rating and Valuation Acts, 1932, 1937, 1938, and 1940 have been passed. In future, therefore, it may be convenient to refer to these Acts, together with the principal Act, as the Rating and Valuation Acts, 1925 to 1940.

### PART I

#### *Rating*

## RATING AUTHORITIES

In place of the parish as the statutory rating unit, rural rating areas (rural districts) and urban rating areas (county and non-county boroughs and urban districts) are adopted for purposes of the Act.

Simplification of administration was effected and clerical work lessened by reducing the operating authorities in rural areas from 12,882 to 688, and in urban areas from 2,664 to 1,119. But the parish is retained as a sub-unit of rating, and a separate section of the list (separately totalled) is assigned to each parish. (Sect. 21 (2).)

As from the appointed day (1st April, 1927) all the powers and duties of overseers in relation to the "making, levying, and collection of rates," and of any other person possessing powers under a local Act in that behalf, were transferred to the rating authorities. It will be noticed that this section did not transfer the powers of overseers in connection with the preparation of valuation lists. This duty was, however, transferred to the rating authorities by Sect. 25, and Sect. 62 provided for the entire abolition of the office of overseers, and for the transfer of the powers and duties to rating authorities. The "rating area" means the area of the rating authority (Sect. 68), and is not to be confused with the "assessment area," which is the area of an assessment committee constituted under Sect. 16 of the Act. Generally speaking, the assessment area will comprise two or more rating areas, except in the case of county boroughs, when both areas may be co-terminous.



## **RATING COMMITTEES**

Power is given to the rating authority, enabling them to appoint a committee for the purpose of their powers and duties under the Act. The powers of such committee are subject to the same restrictions as in the case of committees appointed under Sect. 85 of the Local Government Act, 1933.

It will thus be seen that the rating authority may authorize the rating committee to exercise any power possessed by the council under the Act, other than that of raising a loan or making a rate.

In rural rating areas the Parish Council of every parish or group of parishes, and the Parish Meeting of every parish not under a Parish Council, are entitled to appoint two persons (who must be local government electors) to act as members of the rating authority or of any rating committee appointed by that authority as regards the valuation of property within the parish or group of parishes. (Act 1925, Sect. 1 (4).)

## **PROVISIONS AS TO PRECEPTS**

All other local authorities, who derive income from the levying of rates, precept upon one or more of the appropriate rating authorities for their requirements for a certain rate in the £ calculated according to estimates of the produce of the General Rate prepared by the rating authority.

## **LEVY AND REVISION OF GENERAL RATE**

From the date of the first new valuation list, the rating authority, in lieu of the poor rate and any other rate which they had power to make, were required to make and levy for their area a consolidated rate termed "the General Rate." In boroughs and urban districts a consolidated general rate was substituted for the various rates which formerly existed. In rural areas there is a general rate and special rates levied on those districts separately chargeable with special expenses as from the appointed day (1st April, 1927), if any. (Act, 1925, Sect. 2.)

Amounts other than Special Rates chargeable separately on any part of a rating area are to be levied as an additional item of the general rate in that part of the area. (Sect. 2 (5).)

Subject to certain provisions every general rate is to be at a uniform amount per pound on the rateable value of each hereditament in the area.

## **EXEMPTIONS FROM FULL RATEABILITY**

The Rating and Valuation Act, 1925, provided that all the

enactments relating to the poor rate which were in force at the commencement of the Act shall so far as not repealed by the Act apply to the general rate. These Acts and exemptions are dealt with later. (Sect. 2 (3).)

### OPERATIONS AND INCIDENCE OF RATE

A Special Rate on each parish or part of a parish separately charged with the Special Expenses under the Public Health Act, 1936, or the Lighting and Watching Act, 1833, has the same incidence as a Special Expenses Rate under the Public Health Act, 1936. (Sect. 308 (1).)

Rating Authorities are enabled to make rates without the formality of allowance by Justices, and may make additions or corrections as the circumstances require.

An amendment was made in the definition of "the period of the rate." The contribution of an outgoing or incoming ratepayer to the General Rate of a half-year will correspond exactly with the portion of the half-year during which he is in occupation.

### RATE MADE RETROSPECTIVE

The gap, if any, between the end of one rate and the making of the next, is abolished, and the ratepayer pays his proper proportion of the rate, according to the number of days in the rate period that he has been in occupation. (Sect. 4.)

### AMENDMENT OF RATE

The Act provides that the rating authority may at any time make such alterations in a rate as appear necessary, in order to make the rate conform with the provisions of the Act, and any other enactments relating thereto. In particular the rating authority may—

(a) Correct any clerical or arithmetical error in the rate.  
(b) Correct any erroneous insertions or omissions or any misdescriptions.

(c) Make such additions to, or corrections in, the rate as appear to be necessary by reason of—

(i) Any hereditament, unoccupied at the time of the making of the rate, coming into occupation; (ii) any change in the occupation of any hereditament; (iii) any property previously rated as a single hereditament becoming liable to be rated in parts.

Sub-sect. (2) of Sect. 5 provides that every amendment made under paragraph (a) or paragraph (b) above shall have effect as if it had been contained in the rate as originally made.

**PUBLICATION OF RATE**

Sect. 6 provides that notice of every rate shall be given by the rating authority within seven days after the making thereof, and that the rate shall not be valid unless notice thereof is duly given in manner for the time being required by law. Any such notice may if the authority think fit, be given in one or more of the three following courses, viz.—

(a) Publication by notice on church doors under Sect. 2 of the Parish Notices Act of 1837.

(b) Publication by notice in some public or conspicuous place in each parish.

(c) Publication by newspaper advertisement.

**THE DEMAND NOTES FOR RATES**

Sect. 7 requires the demand note to include information with regard to the following matters—

(a) Situation and description of the property.

(b) The rateable value, and, where it differs from the rateable value, also the net annual value.

(c) The amount in the pound at which the rate is charged.

(d) The period in respect of which the rate is made.

(e) The amounts in the pound which are being levied for the purposes respectively of the rating authority, and of each authority by which a precept has been issued to the rating authority.

(f) The amount, if any, in the pound which is being levied as an additional item of the rate.

(g) The amounts in the pound which are being levied for such of the principal services administered respectively by the rating authority and the authorities by which precepts have been issued to the rating authority as may be prescribed.

The information specified in paragraphs (a), (b), (c), (d), and (e) above shall be included in the demand note for a special rate.

**DISCOUNTS ON GENERAL RATES**

Sect. 8 authorizes the rating authority, if they think fit, by resolution, to direct that an allowance by way of discount for prompt payment, not exceeding two and a half per cent, shall be made on the amount due in respect of any general rate from every person who pays the net amount due before such date as the rating authority shall prescribe. Suitable forms of schedules have been prescribed. Discount must not be allowed to compound owners.

The rules under the Act permit a combined demand note which will include water or other rate, rent, or charge payable to the rating authority.

## PAYMENT OF RATES BY INSTALMENTS

The Poor Rate Assessment and Collection Act, 1869, provides that where a rate is made for a period exceeding three months, the Rating Authority may declare it payable by instalments at specified times, and if so, each instalment should only be enforceable as and when it falls due. A verbal demand suffices to cover an instalment providing the original demand has been made. (*Walton-on-the-Hill Overseers v. Jones*, [1893] 2 Q.B. 175.)

## THE GENERAL RATE

The general rate is to be made, levied, and collected, and is to be recoverable in the same manner as the poor rate, and all the enactments relating to the poor rate, so far as not repealed by the Act are applied to the general rate, provided—

(i) The provisions of Sect. II of the Poor Relief Act, 1814, which empowers justices in petty sessions, with the consent of the parish officers, to discharge poor persons from payment of the poor rate, are to cease to apply. The Act grants the power of remitting payment of the general rate to the rating authority.

(ii) The justices are not to issue a warrant of commitment in default of distress for non-payment of the general rate against any person who proves that his failure to pay is not due to wilful negligence or culpable neglect. Inquiry into a defaulter's ability to pay must be made in his presence and a warrant of arrest may be issued for this purpose. A written statement may be required from employers in evidence of a defaulter's wages. The Justices may remit rates in such cases. (See Money Payments (Justices Procedure) Act, 1935, and Home Office Circular dated 8th November, 1935.)

## EXCUSAL OF PAYMENT OF RATES

In addition to the provisions mentioned above Sect. 2 (4) authorizes the Rating Authority to reduce or remit payment of rates on account of the poverty of any person liable for payment.

During the war, 1939-45, cases of hardship arising out of war conditions have been dealt with by remission of rates under Section 2 (4) under the authority of Circular 2215, Ministry of Health (22nd November, 1940) which related to premises completely demolished and uninhabitable by reason of structural damage, destruction of essential services, proximity of unexploded bombs, and premises slightly damaged.

## PROVISIONS AS TO PRECEPTS

Sect. 9 (i) makes provision for precepts under any enactment being sent to the rating authority.

Sect. 2 (4) directs that "where any amount, other than an amount which falls due to be raised by means of a 'special rate,' is, by virtue of any precept or otherwise, chargeable separately on any part of a rating area, the rating authority shall levy that amount on that part of the area together with, and as an additional item of, the general rate."

Sect. 9 (2) (c) provides that the amount due under a precept to the authority by which it was issued shall be the amount produced by the rate of the amount in the pound specified therein, and the rating authority shall make a payment in accordance with the requirements of the precept on account of the amount due thereunder. Interest at 6 per cent per annum accrues on all instalments unpaid after six weeks from the commencement of the period in respect of which the precept was issued.

Sect. 9 (2) (d) provides that for the purpose of enabling councils of counties to issue the precepts the following arrangement shall apply—

Every rating authority shall, before 1st February in each year, transmit to the County Council an estimate of the amount, calculated in the prescribed manner, which would be produced in the next financial year by a rate of a penny in the pound levied in the rating area or part thereof, as the case may be, if provision were not made by the said Part II of the Second Schedule for any such relief as aforesaid which operates only in an urban rating area. The aggregate amount of the payments required by the precept shall not exceed the sum which a rate of the amount in the pound therein specified would produce on the basis of the estimate for that year. Sect. (3) provides that every general rate, subject to the provisions of the Act, is to be levied at a uniform amount per pound on the effective rateable value of the property liable. Differential rating of special properties (e.g. reservoirs, etc.) is to be effected by means of a reduced rateable value (see Sect. 22 and Second Schedule), and by this means it becomes possible to maintain a uniform rate in the pound.

The total amount produced by the specified rate poundage must be paid over to the precepting authority and any surplus adjusted in the next precept.

#### **COST OF LEVY AND COLLECTION OF RATE**

Sect. 9 (4) authorized the Minister to make Rules specifying how and to what extent the cost of the collection of a rate and other expenses should be treated as deductions in ascertaining the amount produced by the rate. The Rating and Valuation (Product of Rates and Precepts) Rules, 1926, provided that, in

calculating the product of the rate, the cost of collection should be deducted from the gross rate income. The Rate Accounts Order, 1926, require the keeping of a "Cost of Rate Collection" Account which is closed by transfer to the Rate Income Account as a charge against the gross rate produce. In this manner the cost of levying and collecting is the first charge on the produce of the rate.

### UNIFICATION OF FUNDS AND ACCOUNTS

For the unification of funds and accounts the rating authority is to keep, in substitution for such of their existing rate funds as were being kept for the whole of the area, one rate fund termed "the general rate fund." The rating authority will not, as regards income which belongs to, or expenditure which is chargeable on, the whole of the rating area, be required to keep separate accounts for the parishes in their area. The council of a county keep separate accounts for rating areas and not for parishes.

### RATING OF AND COLLECTION OF RATES BY OWNERS (COMPOUNDING)

(a) **Compulsory.** Sub-sect. (1) of Sect. 11 provides that the rating authority may, by resolution, direct that certain owners thereof shall be rated instead of the occupier. The resolution will apply to "all hereditaments" within a class to be defined by reference to rateable value. Previously the rents had to be payable at periods less than quarterly for the section to apply, but by the Local Government Act, 1929, Sect. 71, it is optional on the local authority to define the properties to which Sect. 11 (1) is to apply by reference to the intervals at which rent is payable or collected. The rateable value defined in the resolution must not exceed £13. Rating authorities are not compelled to accept the limits prescribed. The allowance under this sub-section is 10 per cent, but this was increased temporarily to not exceeding 15 per cent by the Rating and Valuation Act, 1928.

Under Sect. 11, the Rating Authorities were not, however, bound to accept the limits prescribed in the Act, and they had power to continue the arrangements already in operation in their area. But a resolution had to be passed before the appointed day. In such cases the provisions contained in the Second Schedule of the Rating and Valuation Act, 1928, now apply.

(b) **Voluntary Agreements.** Sub-sect. (2) of Sect. 11, however, can be applied irrespective of rateable value. All that is necessary in order to allow rating authority and owner to enter into agreement under the sub-section is that the rental period shall be

less than quarterly. It follows that agreements can be entered into under sub-sect. (2) in respect of premises which lie outside the limits of a resolution passed under sub-sect. (1).

On the other hand, premises within the limits of a resolution under sub-sect. (1) of Sect. 11 will be found to be also premises within the wording of sub-sect. (2). The allowances to the owner rated by resolution under sub-sect. (2) are as follows—

- |                                                              |               |
|--------------------------------------------------------------|---------------|
| (a) If owner pays rates whether property is occupied or not  | . 15 per cent |
| (b) If owner pays rates only so long as property is occupied | . 7½ " "      |
| (c) If owner only accounts for rates collected from occupier | . 5 " "       |

The final words of sub-sect. (2) are: "An allowance made under this sub-section in respect of any hereditament to an owner who is rated under the preceding sub-section shall be in substitution for any allowance to which he might otherwise have been entitled in respect of that hereditament under the preceding section."

## RETURNS FROM OWNERS

Every owner who is compulsorily rated, or who agrees to be rated or collect rates, shall from time to time on demand give to the rating authority such information as to occupiers as the authority may require.

## RECOVERY OF RATES FROM OWNER

Sub-sects. (4) to (7) inclusive of Sect. 11 are concerned with the recovery of rates in cases where the owner has become liable to rates instead of the occupier or has agreed to collect from the occupier. Sub-sect. (4) provides that the rates shall be recoverable from the owner or his agent who collects them in the same manner and subject to the like conditions in and subject to which rates are recoverable from occupiers, viz. by distress on proof of demand. Sub-sect. (5) adds a necessary provision as to the calculation of the amount of rates so recoverable from an owner who has merely agreed to collect the rates. He will collect rent as well as rates and may fail to collect the full amount due and an allocation of the total amount collected between rent and rates will be necessary.

The rule of law is that where a particular method of recovery is prescribed by statute, no other method is open. Since sub-sect. (4) prescribes recovery by distress, that is the only method open. (*Liverpool Corporation v. Hope*, 1938, 158 L.T. 215.)

Sub-sect. (6) provides for returns from owners as to occupiers and periods of occupation. Sub-sect. (7) applies certain sections

of the Poor Rate Assessment and Collection Act, 1869. That Act does not, of course, apply to owners who merely agree to collect the rates, such an agreement being an innovation made by the new Act. The sections applied are 7, 8, 12, and 19 of the Act of 1869.

In reference to a warrant of distress for rates, under the Middlesex County Council (General Powers) Act, 1938, Sect. 118, the owner is the person entitled to receive the rent in his own right, and if he appoints an agent to collect his rents, the agent's duty is to pass those rents on. (*Adams and Watts v. Southall R. A.* (1943) K.B.D.)

### REIMBURSEMENT TO OWNER

Sub-sect. (9) of Sect. 11 provides that: "Any owner who under sub-sect. (1) of this section pays any rate which as between the owner and the occupier the occupier is liable to pay, shall be entitled to be reimbursed the amount so paid." The case of *Nicholson v. Jackson*, 1921 (124 L.T. 802), decided under the Rent Restrictions Acts, established that the tenant of a controlled house cannot be called upon to reimburse any larger sum than the amount reimbursed in 1914, increased by the *net* increase in the rates, i.e. the tenant had to get the benefit of the difference between the 1914 compounding allowance and the present-day compounding allowance, the owner being bound to pass on the increased allowance to the tenant. Upon a decrease of rates the owner would correspondingly benefit. (See also *Strood Estates, Ltd. v. Gregory* (1938) A.C. 118.)

The effect of the Restriction of Rent and Mortgage Interest (Restriction) Act, 1938, is to reverse the *Nicholson* and *Strood Estates* cases, and the owner receives the benefit of the compounding allowances.

### RECOVERY FROM RATEPAYERS

Goods which do not belong to the person assessed cannot be distrained upon, unless there has been a fraudulent assignment to avoid distress. Save in exceptional cases, such as bankruptcy, the only method of recovering is by distress following summary proceedings. Rates are not a liability at Common Law, but a statutory charge recoverable by distress. No action lies in the High Court. An owner-occupier cannot be forced to create a charge on his premises. Moreover, an owner-occupier would be less able to pay the increased mortgage charges under such circumstances.



## RECOVERY OF RATES IN ARREARS

The only method of recovery is distress. (*Liverpool Corporation v. Hope*; 1938, 158 L.T. 215.) The method known as "walking possession" has no statutory support. (*Day v. Davies*, [1938] 2 K.B. 74.)

## POWER AND DUTY TO MAKE SUFFICIENT RATES, ETC.

Sect. 12, sub-sect. (1), provides that every local authority shall make such rates or issue such precepts as will be sufficient to provide for the expenditure to be incurred by the authority during the period in respect of which the rate is made or the precept is issued. Such expenditure is to include any sums payable to any other authority under precepts issued by that authority together with such an additional amount as is required to meet—

(a) Expenditure previously incurred, whether within six months before the making of the rate or issue of the precept or not.

(b) Contingencies.

(c) Expenditure which may fall to be defrayed before the date on which the moneys to be received in respect of the next subsequent rate or precept will become available.

The limitation in respect of the past expenses to which local authorities were previously subject, was included in Sect. 210 of the Public Health Act, 1875, which provided, concerning the general district rate, that: "Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months of the making of the rate . . ."

## RECOVERY OF RATES FROM TENANTS AND LODGERS

Sect. 15 authorizes Rating Authorities to recover unpaid rates from tenants and lodgers. The amount recoverable at any time cannot exceed the amount of rent due from the sub-tenant to the person rated.

## PRIORITY OF RATES

A landlord has no preferential claim for rent over rates. (*Hickman v. Potts* (1940), H.L.)

## EXEMPTION FROM RATING

The Westminster City Council rated the Royal United Services Institution as the occupier of the Whitehall Museum. The Institution claimed exemption under the Scientific Societies Act, 1843, as a society instituted for the purposes of science, literature, or the fine arts exclusively, and supported wholly or in part by annual voluntary contributions. The London Quarter Sessions allowed the appeal of the Institution, but stated a case for the opinion of the High Court.

The charter of the Institution stated that its objects were the promotion and advancement of naval and military science and literature. The Institution was supported by members' subscriptions and an annual grant from the Government. The Council contended that the Institution did not come within the provisions of the exemption because the term "science" meant "physical science" and the Government grant could not be regarded as a voluntary contribution.

The Court upheld the decision of the justices. There is nothing to contradict the proposition that the Institution was instituted for the purposes of science and literature exclusively and decided cases had established that the Government contribution may be regarded as a voluntary contribution within the meaning of the Act of 1843. (*Westminster City Council v. Royal United Services Institution*, 1938, 36 L.G.R. 450.)

The owner of a bungalow let furnished for short periods was held liable during letting, notwithstanding that he removed the furniture between seasonal lettings. (*Bayliss v. Chatters* (1940), K.B.D.)

## PART II

### *Valuation*

## AREAS AND AUTHORITIES

The chief object of the Rating and Valuation Act, 1925, was to promote uniformity in valuation, and Part II is framed with the view of achieving as much uniformity as practicable between individual ratepayers and between one administrative area and another. The main provisions of the Act affecting the setting up of assessment areas and assessment committees are contained in Sects. 16 and 17, which are included in Part II of the Act.

## ASSESSMENT AREAS

For the purpose of valuation the county is divided into assessment areas as follows—

(a) Each county borough, unless the council thereof decided that the area should be included with other rating areas in its neighbourhood.

(b) Outside county boroughs: each county council after consultation with various parties interested may divide the county into one or more areas, each consisting of one or more rating areas; or it may submit a joint scheme with a neighbouring county or county borough. These groups of rating areas after being approved by the Minister are known as Assessment Areas. (Sect. 16.)

A joint scheme may also be made by two or more councils, whether councils of counties, county boroughs, urban districts, or rural districts, for their joint areas.

In certain areas where local Acts of Parliament are in operation it is possible to retain the former local machinery. Thus, in the West Derby Assessment Area, which comprises the City of Liverpool, the county borough of Bootle, the borough of Crosby, and the urban district of Litherland, the scheme approved by the Ministry of Health preserved the privileges by the various interests under the provisions of the Liverpool Corporation Act, 1921.

## ASSESSMENT COMMITTEES

The union assessment committees disappeared under the Act and the new assessment committees comprise nominated members of the District Councils and the County Council in which the assessment area is situated.

Where the assessment area is a single county borough the assessment committee is appointed by the council of the borough, and consists of such number of persons, not necessarily members of the council, as may be determined by them; and not less than one-third must be persons who are not members of the council. (Sect. 17 (3) as amended by the Local Government Act, 1929, Sect. 15 (1) (3).) In the case of any other assessment area the members of the assessment committee are to be appointed by, but need not necessarily be members of, the rating authorities, and County Councils concerned in such proportions as may be determined by the scheme constituting the area. (Sect. 17 (4) as amended by the Local Government Act, 1929, Sect. 15 (2).) No member of a rating committee may sit on an assessment committee, except where, as may be in a county borough, the entire council is the Rating Committee.

Members of assessment committees retain their seats although ceasing to hold office as councillors. The term of office is

determined by the appointing body, but must not exceed five years. The quorum is not less than three.

The Ministry of Health has now to deal with only about 340 assessment committees instead of about 600 previously.

Salford Assessment Committee appointed their acting Clerk (W. Brown) the chief committee clerk and election and registration officer of the Salford City Council's town clerk's department. Objection was taken to this appointment on two grounds. First, that he was disqualified under Schedule I, Rule 12, and Schedule IV, Part III, Rule 4 of the Rating and Valuation Act, 1925, and secondly, that his dual appointment gave rise to a suspicion of bias.

The Court of Appeal held that the Assessment Committee were prohibited from allowing such a clerk to remain in attendance during the hearing and subsequent deliberations. It would give an appearance that justice was not being done to the objector. This was a common law decision and the fact that in London the town clerk had to be clerk to the Assessment Committee was a specific invasion of the common law objection to bias which might otherwise be made. (*Rex v. Salford Assessment Committee, ex parte Ogden*, [1937] 2 K.B. 1.)

## COUNTY VALUATION COMMITTEES

County Valuation Committees are established comprising such number of members of the County Council as they think fit to appoint, together with one representative each, nominated by the assessment committees controlling assessment areas within the county.

Their duty is to endeavour to secure uniformity of assessment within the county; and for this purpose they are endowed with various powers, including the right to appear as parties to objections or appeals (which take the place of the right to prepare the county rate or standard for county rates), and authority to convene conferences with assessment committees for the framing of directory resolutions. By Sect. 55 of the Rating and Valuation Act, it is provided that county valuation committees have power to appoint "such rating officers, valuation officers and other officers as they think fit, and to pay to any officers so appointed such reasonable salaries as they think fit."

A county valuation committee can repay members' travelling and subsistence expenses reasonably incurred in attending meetings, and that any such expenditure shall be defrayed as expenses for general county purposes. (Sect. 53 (2).)

It is the duty of every county valuation committee to take

such steps as they consider necessary for the purpose of promoting uniformity, and, notwithstanding the power of the assessment committee to regulate their own proceedings, such regulation is subject to the provisions of the Act, under which in order to promote uniformity, the valuation committee may direct their officer to attend and take part in the meetings of the assessment committee. Such direction does not, however, make the valuation committee's officer a member of the assessment committee and he is not thereby entitled to participate in decisions. (*Middlesex County Valuation Committee v. West Middlesex Assessment Committee*, 1937, Ch. 361.)

### CENTRAL VALUATION COMMITTEE

A Central Valuation Committee for promoting uniformity in valuation is also constituted by a scheme prepared by the Ministry of Health after consultation with local authorities and associations of local authorities and existing assessment committees; (Sect. 57). This central valuation committee as at present constituted consists of thirty-two members of rating authorities, county valuation committees, assessment committees, representatives of local government associations, and other persons, not being officers of the Inland Revenue, as may be provided by the scheme.

Every assessment committee must send to it a copy of its annual report. (Sect. 65.)

The functions of the central valuation committee include—

1. To promote national uniformity in the principles and practice of valuation.
2. To assist the Minister of Health and local authorities in the co-ordination of functions in reference to rating and valuation.
3. To arrange conferences on relevant matters.

The committee first met on the 20th October, 1926, and elected the late Mr. (afterwards Sir) Thomas White, of Liverpool, as the first Chairman. The committee has made Representations to the Minister of Health, issued Annual Reports, and circulated a number of letters to Rating Authorities and assessment committees throughout the country.

The uniformity aimed at has not so far been achieved to any great extent.

### APPOINTMENT OF VALUER

Any rating authority, assessment committee, or county valuation committee may employ a valuer, who is empowered (under Sects. 38 and 55) to enter on, survey, and value any hereditament, and a penalty for wilfully delaying or obstructing such valuer is a maximum of £5.



# Part III.—Freight Transport Hereditaments

Values

1	2	3	4	5	6	7	8	9	Net Annual Value (as in Col. 9) and Rateable Value apportioned between Transport Purposes and Non-Transport Purposes						13	14
Assessment No.	Name of Occupier	Name of Owner	Description of property	Name or situation of property	Estimated Extent	Gross Value of the hereditament where required to be ascertained	Whether Railway, Canal or Dock	Net Annual Value of the hereditament	Transport Purposes						Rateable Value of the hereditament (i.e. total of sums of Col. 10C, 10B, 10A, 11B, and 12B)	Date of amendment and initials of responsible officer
									Transport Purposes		Non-Transport Purposes					
									That part of the hereditament of which the rateable value as calculated in accordance with the Rating and Valuation Act, 1925, or any scheme made thereunder, or any local Act, differs from the Net Annual Value	Rateable Value as calculated in accordance with the Rating and Valuation Act, 1925, or any scheme made thereunder, or any local Act	Net Annual Value	Rateable Value	Net Annual Value	Rateable Value	Net Annual Value	Rateable Value
									10A	10B	10C	11A	11B	12A	12B	

A County Valuation Committee has power to appoint valuers to value special properties. (*Coulsdon and Purley U.D.C. v. Surrey C.C.*, [1934] Ch. 694; 32 L.G.R. 447; 98 J.P. 437; 151 L.T. 522.)

### VALUATION LIST

The Valuation List is "a list of all the hereditaments in the area."

Under the 1925 Act, the power to prescribe the form of Valuation List is given to the Minister of Health, under Sect. 58. The form of Valuation List is set out in Statutory Rules and Orders, No. 395, 1932. (See pages 749-51.)

### MAKING AND OPERATION OF NEW LISTS

In addition to the making and collection of rates, the draft valuation lists are made by the rating authority as the primary valuation authority, to be revised and approved by the assessment committee, by whom objections against the draft valuation list are heard. On the final approval of a valuation list the values contained therein are to be conclusive for rating and other purposes, including the qualification of jurors and the annual value for licensing and other purposes. (Sect. 20.)

### PREPARATION OF VALUATION LISTS

A new valuation list was made for every rating area so as to come into force either on 1st April, 1928, or 1st April, 1929; the second Valuation List being made in 1932, 1933, or 1934; and the succeeding lists at intervals of five years after the second. The date of the second list (not the first) could be varied under Sect. 19 (1) (a). As regards public utility undertakings, it may be that the decisions of the House of Lords in the case of *Kingston Union Assessment Committee v. Metropolitan Water Board*, [1926] A.C. 331; 24 L.G.R. 105; 134 T.L. 483, will secure the statutory abolition of the parochial system and the adoption of a "cumulo" valuation of such "monopoly" hereditaments as a whole.

Sect. 40 requires returns to be made by every owner, occupier, or lessee, giving particulars necessary for valuing the properties, and time must be allowed to enable the rating authorities and the assessment committees to carry out the duties specified in Sects. 25 to 28 and the Fourth Schedule. Under the Rating and Valuation (No. 2) Act, 1932, service of notices under Sect. 40 is now optional. By Sect. 43, copies of the valuation list are to be supplied to the Inspector of Taxes upon application and payment by him to the rating authority.



## PRINCIPLES OF VALUATION

Certain principles of valuation have grown up as a result of common law and judicial decisions, and these may be briefly considered.

1. RENTAL BASIS. In the case of dwelling-houses and premises let at a rack rent (viz. rent based on its utmost value) or on short leases the rent is usually taken as the basis for valuation. The actual rental paid, however, is not conclusive. What has to be ascertained is the rent at which the property might reasonably be expected to let. (*Poplar Assessment Committee v. Roberts*, [1922] 2 A.C. 93); *Ladies Hosiery and Underwear v. West Middlesex Assessment Committee*, [1932] 2 K.B. 679; 147 L.T. 390.)

Rateable value is determined by the actual user independently of any prior use. A change of user may thus change rateable value. (*Metropolitan Board of Works v. West Ham Overseers*, 1870 (L.R. 6 Q.B. 193).)

It was held that it was the duty of the Committee to determine the rent a hypothetical tenant would pay on the date of the proposal for a yearly letting. (*Barratt and Others v. Gravesend A. C.* (1941) K.B.D.)

2. COMPARISON BASIS. In cases where no rent is paid (usually owner-occupied properties) valuation is based on comparison with similar rented properties.

3. CONTRACTOR'S METHOD. In the case of factories, mills, breweries, etc., which are not usually let at a rack rent the valuation is often based on the "contractor's principle." This consists of adding together a percentage on the value of the site, and a percentage on the value of the buildings, together with a sum to represent the enhanced value of the premises due to the presence of rateable machinery. In the case of colleges, halls, museums, and public buildings the valuation is often arrived at by the "substituted building" basis, which is a valuation on the contractor's method, assuming a "substituted" building, free from ornate embellishments which in practice would produce little (if any) additional annual value.

4. REVENUE BASIS. In certain other properties which are seldom or never let on a rental basis (viz. canals, tramways water, gas, electricity supply undertakings, docks, etc.) the "contractors' rent test" principle is only partially applied, e.g. to the buildings as distinguished from the tramline, water pipe line, or gas pipe line, as the case may be. In these cases the main valuation is made upon the revenue basis or "receipts and expenses" method. It is noteworthy that these undertakings have to some extent the character of monopolies. The rent, therefore, which a tenant might give cannot be determined

merely by taking a percentage on the cost of construction. In such cases the Courts have approved of a method of valuation starting from the receipts earned, and arriving at the annual value of the rateable portion of the undertaking by a series of deductions. Many such properties extend into several rating areas, and consequently after a "cumulo" valuation has been made, an apportionment is necessary between the rating areas. The valuations have to be made on the basis of what a hypothetical tenant might give for the portion of the undertaking in each rating area.

5. LICENSED PREMISES. The basis of valuation for a public-house is no different from that of any other class of hereditament, but usually no unfettered rent is available. The rent is often a "tied" rent, and this figure is not of much value for purposes of assessment. A percentage of the average annual gross receipts over a period of three years is a more reliable guide, and this method of assessment is frequently adopted in practice.

It was decided that *Bradford-on-Avon v. White* ([1898] 2 Q.B. 630) was wrongly decided and that the effect of competition among brewers for the ownership of licensed premises must be taken into consideration in fixing rateable value. (*Robinson Brothers (Brewers) Ltd. v. Houghton and Chester-le-Street Assessment Committee*, [1938] A.C. 321; [1938] All E.R. 79.)

The effect of monopoly value on rating of licensed premises is shown in a case where the owner of an hotel was required to pay a monopoly value in five annual instalments. Middlesex Quarter Sessions were of the opinion that the monopoly value ought to be taken into account in fixing the rateable value. The Divisional Court allowed an appeal against this decision holding that monopoly values do not reduce the gross value of the premises. (*Appenrodt v. Central Middlesex Assessment Committee*, [1937] 2 K.B. 48; [1937] All E.R. 325; 157 L.T. 201.)

6. OUTPUT METHODS. Where some other form of payment than rent is made, e.g. royalty payments, the valuation is fixed by multiplying output by a rate of royalty per unit of output. This method is adopted for mines.

7. ACCOMMODATION UNIT BASIS, e.g. per school place, per bed in hospital, per seat in theatre.

8. ZONING BASIS. A method whereby a scale of value based on one hereditament is used to apply to other similar hereditaments, adjustments being made for situation, a different unit value applying to the zones into which the hereditament is divided.

9. RAILWAYS, ETC. Based on the "cumulo" principle as hereafter explained.

SECOND SCHEDULE  
ASCERTAINMENT OF RATEABLE VALUE  
PART I: DEDUCTIONS FROM GROSS VALUE

1. *Class of Hereditaments*

1. Houses and buildings without land, other than gardens, where the gross value does not exceed £10.\*

2. Houses and buildings without land, other than gardens, where the gross value exceeds £10, but does not exceed £20.\*

3. Houses and buildings without land, other than gardens, where the gross value exceeds £20, but does not exceed £40.\*

4. Houses and buildings without land, other than gardens, where the gross value exceeds £40, but does not exceed £100.\*

5. Houses and buildings without land, other than gardens, where the gross value exceeds £100.\*

6. Land (other than agricultural land) with buildings valued together therewith as one hereditament.

7. Land (other than agricultural land) without buildings.

NOTE: For the purposes of this part of the Schedule the expression "Houses and buildings" does not include mills, manufactories or premises of a similar character used wholly or mainly for industrial purposes or hereditaments valued as part of any railway, dock, canal, gas, water, electricity, or other public utility undertaking.

*Class of Hereditaments*

1. Houses and buildings without land other than gardens where the gross value does not exceed £15.

2. Houses and buildings without land other than gardens where the gross value exceeds £15 but does not exceed £20.

2. *Amount of Deduction*

An amount equal to 40 per cent of the gross value.

£4 or an amount equal to 33 $\frac{1}{3}$  per cent of the gross value, whichever is the greater.

£7 or an amount equal to 25 per cent of the gross value, whichever is the greater.

£10 or an amount equal to 20 per cent of the gross value, whichever is the greater.

£20 together with an amount equal to 16 $\frac{2}{3}$  per cent of the amount by which the gross value exceeds £100.

An amount equal to 10 per cent of the gross value.

An amount equal to 5 per cent of the gross value.

*Amount of Deduction*

An amount equal to 40 per cent of the gross value.

£6, together with an amount equal to 30 per cent of the amount by which the gross value exceeds £15.

The amendment applicable to London was as follows—

*Class of Hereditaments*

Class 1. Houses and buildings without land, other than gardens, where the gross value does not exceed £15.

Class 2. Houses and buildings without land, other than gardens, where the gross value exceeds £15 but does not exceed £20.

Class 3. Houses and buildings without land, other than gardens, where the gross value exceeds £20 but does not exceed £40.

*Maximum Amount of Deduction*

An amount equal to two-fifths of the gross value.

£6, together with an amount equal to three-tenths of the amount by which the gross value exceeds £15.

£7, together with an amount equal to one-quarter of the amount by which the gross value exceeds £20.

\* For the purposes of the first two Valuation Lists, but not for any subsequent list under the Act, the under-mentioned deductions were applicable (outside London) as provided by the Rating and Valuation Act, 1928. The Rating and Valuation Act, 1937, continues these for the third new list only.

*Class of Hereditaments**Maximum Amount of Deduction*

*Class 4.* Houses and buildings without land, other than gardens, where the gross value exceeds £40 but does not exceed £100.

£12, together with an amount equal to one-fifth of the amount by which the gross value exceeds £40.

*Class 5.* Houses and buildings without land, other than gardens, where the gross value exceeds £100.

£24, or £20 together with an amount equal to one-sixth of the amount by which the gross value exceeds £100, whichever is the greater.

The above is in substitution for the Third Schedule to the Valuation (Metropolis) Act, 1869, for Valuation Lists for 6th April, 1931, and their revision and alteration, but not for the purposes of any new subsequent lists. The Rating and Valuation Act, 1937, continues these for the 3rd new lists only.

**DEFINITIONS**

In the preparation of the List certain terms are defined—

1. **GROSS VALUE** means the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes, if any, and if the landlord undertook to bear the cost of repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent. The property tax is paid by the tenant but is usually recoverable from the owner by deduction from the next payment of rent.

2. **NET ANNUAL VALUE** is defined in Sect. 22 (b) as: "The rent at which the hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes, and to bear the cost of the repairs and insurance and the other expenses if any, necessary to maintain the hereditament in a state to command that rent." The above applies to hereditaments which are not set out in Part I of the Second Schedule to the Act; and in the case of all properties in this schedule the net annual value is the gross value, less the statutory deductions specified.

3. **RATEABLE VALUE.** See below.

4. **RATE** means a rate the proceeds of which are applicable to local purposes of a public nature, and which is leviable on the basis of an assessment in respect of the yearly value of property.

**ASCERTAINMENT OF RATEABLE VALUE**

Sect. 22 deals with the ascertainment of rateable value, and is as follows—

(a) If the hereditament belongs to one of the classes specified in the first column of the table contained in Part I of the Second Schedule to the Act (see page 755) there shall be deducted from the gross value of the hereditament an amount representing the

deduction specified with respect to hereditaments of that class in the column of the said table and the gross value as so reduced is in the Act referred to as the net annual value.

(b) If the hereditament is not such a hereditament as is mentioned in paragraph (a), there shall be estimated the rent which a tenant might reasonably be expected to pay from year to year if the tenant undertook to pay all usual tenant's rates and taxes, and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent, and the annual rent as so estimated shall, for the purposes of this Part of the Act, be taken to be the net annual value of the hereditament.

(c) The rateable value of a hereditament shall be taken to be the net annual value thereof as ascertained under paragraph (a) or paragraph (b), as the case might be, except that if the hereditament belongs to one of the classes specified in the first column of the table contained in Part II of the said schedule, its rateable value shall be taken to be the amount produced by making from the net annual value such deduction as is specified with respect to hereditaments of that class in the second column of the said table.

(d) If the amount of the net annual value and of the rateable value, in a case where those values are the same, or in any other case the amount of the rateable value, includes a fraction of a pound, the amount of both those values or of the rateable value, as the case may be, shall be increased or reduced, to the nearest complete pound, or if the fraction is ten shillings the fraction shall be disregarded.

Part I of the Second Schedule, as amended by the Rating and Valuation Acts, 1928, 1932, 1937, and 1940, is given on pages 755 and 756.

**Rating and Valuation (Air-Raid Works) Act, 1938.** In assessing premises for rating purposes no regard must be paid to any additional room or other part of the hereditament or of any structural alteration or improvement made and used solely for the purpose of air-raid protection. Hereditaments used solely for air-raid precautions purposes are entirely exempt from rating.

There is a special provision relating to provisional lists in London and a separate Act relating to Scotland.

No entry is to be made in the rate book in respect of these properties or parts of properties.

Thus, the occupiers constructed an air-raid shelter, diminishing the space available for their business, and claimed a reduction of the gross value. It was held that the result of the structural alterations was to diminish and not to increase the

rateable value, and that the Rating and Valuation (Air-Raid) Works Act, 1938, did not apply, and the occupiers were entitled to have the premises entered in the Supplemental List under Sect. 46, Valuation (Metropolis) Act, 1869, i.e. to be granted the reduction in value which, as a fact, had been found. (*Waterlow & Sons, Ltd. v. Shoreditch Assessment Committee* (1942) K.B.D.)

## MAKING A VALUATION LIST

The procedure as regards the draft list laid down by the Act is as follows—

The general procedure for the preparation and deposit of the draft list, the hearing of objections to and the revision of the list by the assessment committee and final approval thereof are set out in detail in Sects. 25 to 30 and Schedule IV.

It rested with the assessment committee to decide when the first list was to be ready to come into operation in their area, after consultation with the rating authority. Sect. 19 (3). All valuation lists came into force on either the 1st April, 1928, or 1929.

The Rating and Valuation (Postponement of Valuation) Acts, 1938 and 1940. These Acts postpone the making of the Third Valuation List under Sect. 19 of the Rating and Valuation Act, 1925. The list is not to come into force until the "prescribed year," which is defined as not being later than the second year after that in which the end of the present emergency falls. Thereafter, the new Valuation Lists are to be made at intervals of five years.

The postponement of the Third Valuation List (outside London) will have the effect of making all Valuation Lists throughout the country operate in the same year. The Valuation Lists for London operate from 6th April, 1941, and for the rest of the country from the 1st April, 1941. Hitherto, the Valuation Lists have come into force in different years.

The postponement of making a new Valuation List under the 1938 and 1940 Acts does not limit the scope of Sect. 37 so as to preclude a rating authority from making a proposal to increase an assessment which is found to be too low. (*Murphy Radio, Ltd. v. Welwyn Garden City*, K.B.D. 1943.) Where a reduction in value had taken place due to circumstances arising out of the present emergency and which did not apply to all, or substantially all hereditaments in Westminster and respondents were entitled to have their premises inserted in a Supplementary List at a reduced value. (*Westminster City A.C. v. Conservative Club* (1943), H.L.)

The Time Table for the (a) preparation, (b) revision, and (c) approval of a valuation list runs as follows—

(a) PREPARATION OF DRAFT LIST

(i) Notices may be served by the rating authority—not later than such date as will allow a sufficient interval for completing the various stages in the preparation of the valuation list—on the occupiers, owners, or lessees of rateable hereditaments within their area, requiring them to make a return of particulars for assessment purposes; Sect. 40 (1).

By the Rating and Valuation (No. 2) Act, 1932, service of notices is now optional.

(ii) Returns to be delivered to the rating authority within 21 days of service; Sect. 40 (3).

(iii) "As soon as may be" after the expiry of such 21 days, the rating authority to cause a draft list to be prepared, signed by the Clerk of the Rating Authority, and deposited at the office of the Rating Authority: Sect. 25. Copy is sent to Assessment Committee.

(iv) Notice of the deposit to be given to the county valuation committee and otherwise published; Fourth Schedule, Part I (2).

(v) Draft list to be open to inspection for 21 days from deposit and then immediately transmitted to the assessment committee; *ibid.* (4) and (5) together with returns from occupiers and owners. Notice within seven days of deposit to occupier of property entered for the first time.

(vi) *Objections.* Notice of objection must be lodged with the assessment committee within 25 days of deposit of the draft list.

Objection may be made by a County Valuation Committee to a large number of properties of a given class, and it is no argument that the effect of a decision by an assessment committee will be to make other properties proportionately undervalued if in fact that valuation fixed for properties whose assessment is objected to is correct. (*Lilley & Skinner v. Essex County Valuation Committee*, 1935, 51 T.L.R. 432 (Div. Ct); 153 L.T. 64.)

The committee must within three days after objection is lodged, cause a copy to be sent to the rating authority, and, where the objection relates to a particular hereditament, to the occupier (Fourth Schedule, Part II (2)), but not if the objection is lodged by the owner. (See Rating and Valuation Act, 1928, Sect. 4 (2).)

(b) REVISION OF DRAFT LIST BY ASSESSMENT COMMITTEE

(i) The assessment committee to hold meetings to hear objections and otherwise to revise the list; Sect. 27.

(ii) Meetings to hear objections cannot be held until 30 days from the date of deposit, unless the number of objections received at an earlier date makes it desirable to hold an earlier meeting and the rating authority acquiesce; Fourth Schedule, Part III (1).

(iii) At least 14 days' notice to be given of a meeting (other than an adjourned meeting) by the assessment committee to rating authority and objectors, to hear objections: *ibid.* (2).

(iv) Notice of a decision to be sent to the objectors and occupier of the hereditament affected and to the rating authority; *ibid.* (5).

Notice need not be sent to the occupier in cases where objection is lodged by the owner. (See Rating and Valuation Act, 1928, Sect. 4 (2).)

(v) Notice of any new insertions in draft list or of any increase made otherwise than on objection to be given to the occupier, with an intimation that an objection may be lodged by any person who appeared before the committee (Act 1928, Sect. 4 (4)), at any time within 14 days; *ibid.* (7) and (8). Procedure on an original objection to be followed; *ibid.* (9).

The County Valuation Committee has power under Sect. 18 (2) to direct, if they think it necessary for the purpose of promoting uniformity, that their officer shall attend the meetings of the Assessment Committee and take part in those meetings but not in decisions. (*Middlesex County Valuation Committee v. West Middlesex Assessment Committee*, 1936, 34 L.G.R. 489; [1937] Ch. 361.) A county valuation committee has power to appoint valuers to value special properties. (*Coulsdon and Purley U.D.C. v. Surrey County Council*, [1934] Ch. 694; 32 L.G.R. 447; 98 J.P. 437; 151 L.T. 522.)

#### (c) FINAL APPROVAL OF VALUATION LIST

(i) First list to be finally approved on 31st January of the year in which it is to come into force, Sect. 28 (1). The alternative date, 31st July, apparently relates to a list retarded or accelerated under Sect. 19 (1) (a).

(ii) The committee may approve the list although they may not have disposed of all the objections by that date, leaving those left over to be dealt with as soon as possible afterwards, and with the like consequences as if it had been a proposal for the amendment of the current list; Fourth Schedule, Part III (10), Sect. 37.

(iii) Total of valuations for rating area and each parish must be inserted in the List with a declaration of approval and certificate of compliance with the Act must be appended; Sect. 28 (1) (4).



(iv) The approved list, duly certified with three signatures, to be sent to the rating authority for deposit at their offices and notice thereof to be given to the clerk of the peace for the county or borough concerned.

(v) Re-deposit as amended by the assessment committee is abolished, as well as the appeal to special sessions. It is to be particularly noted that special notice must be sent within seven days of deposit to every ratepayer affected by a new assessment (Fourth Schedule, Part I (3)).

In other respects the time-table is left to be settled locally.

Sect. 25 (2) provides that a copy of the draft list is to be transmitted to the assessment committee by the rating authority. It is the duty of the assessment committee to revise such list, from time to time, in accordance with the changes made in the draft list, of which it is to be a copy.

### APPEAL TO QUARTER SESSIONS

Any person who appeared before the assessment committee on the consideration of an objection may appeal to Quarter Sessions against the decision of the committee. (Sect. 31.) Where the rateable value does not exceed £100 any party may appear before a committee of Quarter Sessions by solicitor instead of in person or by counsel. (Sect. 32 (8).) Sect. 37 (8) applied the same provisions to a proposal.

Any person on whom a notice of appeal is served may appear as respondent; provided that where there is more than one respondent, the appellant can only be ordered to pay the costs of one of the respondents. If costs are ordered to be paid to the appellant the Court may apportion those costs among the respondents. Where the appellant is the county valuation committee or a local authority, the occupier of the hereditament to which the appeal relates may appear as a witness in the case instead of appearing as respondent, upon giving notice to the Court. (*R. v. South Eastern Essex Assessment Committee ex parte Patterson*, 1935, 99 J.P. 238; 33 L.G.R. 222 (Div. Ct.); 153 L.T. 152.)

A Committee of Quarter Sessions must be set up in county areas to constitute a continuous Court for Appeals. In boroughs with a separate Court of Quarter Sessions the Recorder hears these appeals, and Sect. 32 (8) does not apply.

Under the Railways (Valuation for Rating) Act, 1930, Sect. 18 (3), the provisions as to objections and appeals shall not apply to railway hereditaments. Appeals in these cases are to the Railway and Canal Commissioners and thence to the House of Lords.

**NOTICE OF APPEAL**

Procedure on appeal is provided by the Fifth Schedule, Part I, and S.R. & O. 1927, No. 416, viz.—

(i) Notice of appeal must be given to the Clerk of the Court to which the appeal is made before the expiration of 21 days after the date on which the valuation list is finally approved.

(ii) A copy of the notice of appeal must also be served by the appellant within the time allowed for giving notice of the appeal on the assessment committee, and on each of the following persons not being the appellant, that is to say—

(a) The rating authority.

(b) Where the appeal relates to a particular hereditament, the occupier of that hereditament.

(iii) The notice of appeal must specify the grounds of appeal.

(iv) The Clerk of the Court on receiving a notice of appeal must, without any application in that behalf, enter the appeal for hearing at the next sitting of the Court to be held after the expiration of 35 days from the date on which the list was finally approved, but the Court may, on an application made by any party to the appeal direct that the hearing shall be postponed and entered for some subsequent sitting of the Court. (S.R. & O., 1927, No. 416, par 5 (8).)

**APPEAL TO HIGH COURT**

Any party to the appeal may, if dissatisfied with the decision of the Court on a point of law, make an application within 21 days to have a case stated for the opinion of the High Court on the point of law, and with the appropriate approval, from thence to the Court of Appeal, and the House of Lords, whose decision is final. The parties to an appeal may agree to refer the matter to arbitration, or to appoint a valuer.

Unless the parties appear personally or are represented by Counsel or Solicitor before the Rating Appeals Committee, an appeal, after being duly entered cannot be withheld or respite until a Consent Order signed by the parties or representatives is filed with the Clerk of the Peace.

**ARBITRATION**

If the parties agree, they may refer the matter in dispute, or any part of it, to arbitration, and the arbitrator's award will be final on questions of fact; and, also, if the parties so agree, on questions of law, or, alternatively, the parties may agree to appoint a valuer to make a binding valuation of any hereditament or any part thereof.

## REVISION OF CURRENT VALUATION LIST

Proposals may be made at any time by any person aggrieved by the incorrectness or unfairness of any matter in the Valuation List, and every Assessment Committee shall hold proceedings for the prompt disposal of proposals. (Sect. 37 (11).)

Revision of a current valuation list under Section 37 in the provinces and under the Valuation (Metropolis) Act, 1869, in London, is not in any way affected by the Postponement Acts of 1938 and 1940.

The Court of Appeal (Lord Greene, M.R., MacKinnon and Tucker, L.J.J.) have allowed an appeal from the decision of a Divisional Court. A proposal under the Rating and Valuation Act, 1925, Sect. 37, to amend a valuation list in respect of a particular property is not invalid because it forms part of a systematic revaluation of all properties in the area. Even if amendments were made as to 99 per cent of the properties, it would still not be a new valuation list. (*Pratt v. North-West Norfolk Assessment Committee* (1945), W.N. 231; 62 T.L.R. 86; 89 S.J. 590; [1946], 1 All E.R. 4.)

## DIFFERENTIAL RATING OF SPECIAL PROPERTIES

The continuation of the equivalent of the privileges enjoyed by any particular class of property in respect of any of the rates to be consolidated, is one of the most important features of the scheme for the consolidation of rates.

Concessions to special properties in respect of the general rate have been made by means of reduced rateable values, which was the existing practice with regard to the general district rate.

The properties ordinarily entitled to reduced assessment may be classified as follows, viz.—

(a) Property rated at one-quarter to both the general district rate and the poor rate under the provisions of the Public Health Act, 1875.

(b) Property rated at the full poor rate but only at one-quarter for the general district rate, viz.: (i) Tithes, or tithe commutation rent-charge; (ii) land covered with water; (iii) land used as a railway, constructed under Act of Parliament for public conveyance; (iv) land used as a canal or towing path for same.

## AGRICULTURAL LAND

Agricultural land was, according to Part II of the Second Schedule, to be rated to the general rate on one-fourth only of its net annual value. This not only continued the existing partial exemption from the poor rate allowed by the temporary

Agricultural Rates Acts, but also made this exemption permanent. This abatement of 75 per cent applied to both urban and rural rating areas. The Act extended to agricultural buildings the 75 per cent relief from rates then enjoyed permanently in respect of agricultural land.

Under the Local Government Act, 1929, relief of rates is afforded on the remaining 25 per cent to the agricultural buildings and land, so that on a normal farm only the farm house and cottages are rateable.

### RAILWAYS, CANALS, ETC.

**Railways (Valuation for Rating) Act, 1930.** Under this Act, the assessments of railway hereditaments are now determined by the Railway Assessment Authority (a body constituted under Sect. 2 of the Act) and not by the Rating Authorities and Assessment Committees. It is the duty of the new Authority to prepare a railway valuation roll containing particulars of the railway hereditaments in England. The first roll came into operation from the appointed day, i.e. in London on 6th April, 1931, and elsewhere from the 1st April, 1931. Subsequent rolls come into operation at quinquennial intervals. The form of Valuation Roll is prescribed by the Minister of Health under Sect. 58 of the Rating and Valuation Act, 1925, and is set out in S.R. & O. No. 451 of 1933.

In Scotland, the work is carried out under the Anglo-Scottish Railways Assessment Authority, i.e. the Joint Authority.

The preparation of the roll necessitates the ascertainment of the average net receipts by deducting non-rateable receipts and working expenses from the total revenue receipts and the determination of the *cumulo* value by a fair and just division of those net receipts between the tenant and landlord, the latter's share representing the *cumulo* valuation and net annual value of the undertaking. The *cumulo* valuation must then be apportioned between (a) the principal undertaking (railway), (b) canal, (c) dock, and (d) subsidiary undertakings (if any). The rateable value of each hereditament is then calculated from the net annual value apportioned to it.

Appeals are to the Railway and Canal Commissioners, and thence on points of law only to the House of Lords.

Expenses are to be defrayed by County and County Borough Councils.

The Act does not extend to Northern Ireland.

Premises leased or licensed by a railway company at a railway station are in the occupation of the company and so are rateable as "freight transport hereditaments" under the Rating and

Valuation Act, 1928, Sect. 6 (3). (*London County Council and Railway Assessment Authority v. Southern Railway Co.*, [1936] A.C. 266.)

Offices of a railway company occupied by officials at the separate stations are used for the "general direction and management of the railway company" under the Rating and Valuation (Apportionment) Act, 1928, Sect. 5 (1) (a) (i), and are not subject to derating. (*Ibid.*)

High tension electric cables and electrical sub-stations essential to the operation of a railway are hereditaments consisting of land used only as a railway under the Rating and Valuation Act, 1925, Sect. 22 (1) and the Railways (Valuation for Rating) Act, 1930, Sect. 13 (2) (i). (*Ibid.*)

A case in 1936 dealt with the rating of premises let out by railway companies for purposes such as bookstalls, shops, show-cases, banks, goods yards, which are only accessible through the station gates when open. The Railway Assessment Authority included some in and excluded others from the railway valuation roll. The Railway and Canal Commission on appeal included them all in the roll as railway hereditaments. The rating authority appealed to the House of Lords who held that they could not be deemed to form part of the railway hereditaments, but were separately rateable. In so doing, they over-ruled the former case *Smith & Son v. Lambeth Assessment Committee*, 1882, 10 Q.B.D. 327.

The case is important to railway authorities because, being excluded from the railway assessment roll, these premises do not secure the benefit of derating attached to railway hereditaments. (*Westminster Corporation v. Southern Railway Co.*, [1936] A.C. 511.)

A case arose out of the decision in the Southern Railway Case with regard to the rating of let-out properties. The Mersey Docks and Harbour Board had previously been rated for the whole of the dock estate as a unit. The Rating Authority made a proposal which had for its object the rating of the separate shipping companies in respect of certain docks and wharves in their separate occupation. Notice of the proposal was served on the companies but not on the Board. The Assessment Committee would, therefore, have made their decision without hearing the Board and in their absence. The Rating and Valuation Act, 1925, Sect. 37 (3), requires the Rating Authority to serve notice of any proposal on the occupier of the premises. The Divisional Court held the view that the occupier meant the existing occupier, and not the person who would be the occupier of the site which was intended to form the new hereditament. Notice must,

therefore, be served upon the Board as occupier. (*Rex v. West Derby Assessment Committee, ex parte Mersey Docks & Harbour Board*, 1939 (1) K.B.D. 173, etc.)

## VALUATION OF ELECTRIC SUPPLY UNDERTAKINGS

Where a trunk electric cable belonging to a supply company passes through a number of parishes, in some of which it is, and in others of which it is not, tapped, the proper method of apportioning the rateable value among the various rating areas through which the main passes is that the rateable value in the rating areas in which the main is not tapped must be determined on the "contractors basis," i.e. by a percentage on the structural or capital value, and the residue of the rateable value of the main must be apportioned between the area in which the main is tapped, according to the gross receipts in each such area. This was held by Macnaghten, J., on special cases stated by an arbitrator. (*Metropolitan Electric Supply Co., Ltd. v. Buckingham County Valuation Committee; Same v. Surrey (North-Western Area) Assessment Committee* (55 T.L.R. 308; 1939), All E.R. 36.)

## TITHES

A Royal Commission under the chairmanship of Sir John Fischer Williams, K.C., was appointed in August, 1934, "To inquire into and report upon the whole question of tithe rentcharge in England and Wales and its incidence, with special reference to stabilized value, statutory remission, powers of recovery, and methods of terms of redemption." The Report was issued in 1936 and constituted the basis of the Tithe Act, 1936, which extinguishes tithe rentcharge and extraordinary tithe rentcharge as from 2nd October, 1936.

The Act has extinguished the following—

1. All tithe rentcharge payable in pursuance of the Tithe Acts, 1836 to 1925.
2. All rentcharges converted out of corn rents under those Acts.
3. All extraordinary tithe rentcharges payable under the Extraordinary Tithes Acts, 1886 and 1897, although these were not rateable at any time.

The Act does not appear to have extinguished the following—

1. Rentcharges payable under the Tithe Act, 1860, in respect of tithes on any gated or stinted pasture and these would seem to be still rateable.
2. Sums or rates payable for each head of cattle turned on common land, but these are not rateable.
3. Corn rents (payable in lieu of tithes) which were not converted into rentcharges under the Tithe Acts, 1836 to 1925.

These are rateable unless exempted by the Local Acts which created them. Provision is made in the Act for their eventual extinguishment.

4. Rentcharges (payable in lieu of tithes) created by awards under Inclosure Acts prior to 1836. They are rateable unless there are contrary provisions in the Act which created them. They do not appear to come within Sect. 30 of the Tithe Act, 1936, and no provision is made for their eventual extinguishment.

5. Fishing tithes. These appear to be still rateable as Sect. 30 does not apparently apply to them.

6. Payments resembling tithes which are not strictly tithes and are not rateable unless provision is expressly made therefor in the Acts creating them.

### VALUATION OF HEREDITAMENTS CONTAINING MACHINERY AND PLANT

For the purpose of the making or revision of valuation lists, the following provisions have effect with respect to the valuation of any hereditament other than a hereditament the value of which is ascertained by reference to the accounts, receipts or profits of the undertaking carried on therein—

(a) All such plant or machinery in or on the hereditament as belongs to any of the classes specified in the Third Schedule of the Act shall be deemed to be a part of the hereditament.

(b) Subject as aforesaid, no account shall be taken of the value of any plant or machinery in or on the hereditament.

For the purpose of setting out in detail the machinery and plant which fell within the class specified in the Third Schedule, a Committee was appointed under Sect. 24 of the Act on the 26th February, 1926, to prepare a statement specifying such machinery and plant.

The Committee reported under date 30th November, 1926, as to the classes of machinery and plant to be deemed to be part of the hereditament. (See Statutory Rules and Orders, 1927, No. 480.)

### MACHINERY AND PLANT

Schedule III of the Act specifies three classes of machinery and plant which are definitely rateable in these terms—

1. Machinery and plant (together with the shafting, pipes, cables, wires and other appliances and structures accessory thereto) which is used or intended to be used mainly or exclusively in connection with any of the following purposes, that is to say—

(a) the generation, storage, primary transformation, or main transmission of power in or on the hereditament; or

(b) the heating, cooling, ventilating, lighting, draining, or

supplying of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament from fire.

Provided that, in the case of machinery or plant which is in or on the hereditament for the purpose of manufacturing operations or trade processes, the fact that it is used in connection with those operations or processes for the purpose of heating, cooling, ventilating, lighting, supplying water, or protecting from fire shall not cause it to be treated as falling within the classes of machinery or plant specified in this Schedule.

2. Lifts and elevators mainly or usually used for passengers.

3. Railway and tramway lines and tracks.

4. Such part of any plant, or any combination of plant and machinery, including gas holders, blast furnaces, coke ovens, tar distilling plant, cupolas, water towers with tanks as is, or is in the nature of, a building or structure.

**Panel of Referees.** A panel of referees has been set up to deal with this subject.

On the 17th December, 1936, the House of Lords gave judgment in the appeal in the Townley Silent Cotton Mill Case. This decision is of considerable importance to owners or lessees of mills and factories which have temporarily ceased working, but in which the process plant and machinery remains installed, and is being kept in condition in anticipation of recommencing work. The Oldham Assessment Committee considered the Townley Mill to be in beneficial occupation for the purpose of a warehouse for the storage of their plant and machinery and fixed the rateable value accordingly. The company appealed on the ground that there was no beneficial occupation by them as their plant and machinery was not rateable. Manchester Quarter Sessions upheld the decision of the Assessment Committee. The King's Bench Division reversed this decision, but the House of Lords found in favour of the millowners on the ground that there was no escape from the plain language of Sect. 24 of the Act of 1925, which forbade any account being taken of process plant and machinery. (*Townley Mill Co. (1919), Ltd. v. Oldham Assessment Committee*, [1937] A.C. 419; [1937] All E.R. 11; 156 L.T. 81.)

## RATING EMPTY PROPERTY

In the City of London and Scotland a proportion of the rates levied is charged on owners of empty properties. It is contended that even empty properties benefit from certain forms of local expenditure and should be charged with a portion of the rates, e.g. police, fire prevention, public lighting, street maintenance and drainage. The London County Council failed in 1936 to



secure the approval of the House of Commons to a Bill to rate empty property.

A cinema company became the tenants of two empty dwelling houses in order to have accommodation available for offices, should their present offices be rendered unfit for use by enemy action, i.e. emergency or stand-by premises. No use had been made of the houses and it was held that the company was not rateable, as they had never entered into physical occupation. (*Associated Cinema Properties, Ltd. v. Hampstead Borough Council* (1944), C.A.)

### PERSONS RATEABLE

(a) Under the Poor Relief Act, 1601, it was provided that rates should be levied upon every inhabitant, parson, vicar, and other, and every occupier *inter alia* of (non-agricultural) lands, houses, coal mines, or saleable underwoods.

(b) Under the Rating Act, 1874, upon occupiers of mines of every description not in the 1601 Act; (non-agricultural) land not subject to rights of common; sporting rights when severed from the occupation of land.

(c) Under the Advertising Stations (Rating) Act, 1889, upon occupiers of property used for advertisement hoardings. In this class of property the owner may be and usually is the person rated.

It should be noted that under the Local Government Act, 1929, agricultural land and buildings are no longer rateable.

Occupation of the premises rated must be "beneficial." This does not necessarily mean that the occupation is pecuniarily profitable, e.g. sewers which are the property of a local authority, are said to be beneficially occupied. What constitutes "beneficial" occupation is a question of fact which may have to be decided by the Courts. The rate is levied upon occupiers of the hereditaments, viz. the person entitled to exclusive possession, except in those cases where the owners are rated instead of the occupiers.

The Statement of Rates Act, 1919, provided that from and after the first day of January, 1920, every demand, or receipt for rent, as may be payable under any statutory enactment by the owner instead of the occupier, must state the amount of rates. Such statement must agree with the last demands received by the owner from the rating authorities. The Act does not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute.

### THE METROPOLIS

The Act of 1925 does not apply to the Metropolis, but under the Rating and Valuation Act, 1928, Sect. 24 of the 1925 Act

(relating to the de-rating of machinery) was made applicable to London. The Rating and Valuation (Apportionment) Act, 1928, Sect. 7 (1) (c) applies certain provisions of the principal Act to London. These concern contents of Valuation List, record of totals, correction of errors, power to employ valuers, and other features.

The form of Valuation List under the Valuation (Metropolis) Act, 1869, is now superseded by the new form of Valuation List which provides for the inclusion of industrial and freight transport hereditaments. (See Statutory Rules and Orders, 1933, No. 785.)

### **RATING AND VALUATION ACT, 1928**

This Act makes applicable to London the revised deductions for properties of the five classes specified in the First Schedule; these being in substitution for the allowances set out in the Third Schedule to the Valuation (Metropolis) Act, 1869, and they operate for the Valuation Lists for 6th April, 1931, and their revision and alteration.

The deductions in Part II are in substitution for Part I of the Second Schedule to the Rating and Valuation Act, 1925 (Classes 1 and 2), and apply outside London. These latter are for the first New Valuation Lists under the Act, and their revision and alteration.

The Rating and Valuation Act, 1932, continued these for the second New Lists, and the Rating and Valuation Act, 1937, for the third.

Sect. 3 amends the allowances to owners rated under Sect. 11 of the 1925 Act, from 10 per cent up to, but not exceeding, 15 per cent, in certain circumstances.

Sect. 4 makes minor amendments to the principal Act, with which it is to be cited as the Rating and Valuation Acts, 1925 and 1928; now Rating and Valuation Acts, 1925 to 1940.

### **EXPENSES**

The expenses of rating authorities are provided for by Sect. 53 (4) and the expenses of Assessment Committees by Sect. 53 (1) (2).

Any expenses incurred under the Act by a rating authority will be paid out of the general rate raised by the authority for their area.

Expenses incurred by an assessment committee (including travelling and subsistence expenses) are to be apportioned among the Rating Authorities in proportion to the rateable values and paid out of the general rate.

Similar expenses of the County Valuation Committee are to be defrayed out of the County Rate.

**AUDIT OF ACCOUNTS**

Sect. 54 requires the accounts of receipts and expenditure under the Act of Assessment Committees and Rating Authorities and their respective officers to be audited by district auditors of the Ministry of Health. Orders governing the Accounts of Rating Authorities were issued by the Ministry of Health, viz. the Rate Accounts (Rural District Councils) and (Borough and Urban District Councils) Orders, 1926.

**RATING AND VALUATION (APPORTIONMENT) ACT, 1928**

As one of the stages in connection with de-rating, this Act provided for the preparation of lists of properties entitled to de-rating as follows—

- (a) Agricultural Land and Buildings.
- (b) Industrial Properties (Factories, Workshops, etc.).
- (c) Freight Transport Undertakings (Railways, Canals, etc.).

Lists of these types of properties were prepared (known as Draft Special Lists), and in due course became part of the Valuation List. These lists were prepared to distinguish and classify the properties which enjoy relief.

For the purpose of the preparation of these lists, the Revenue Officer was introduced in order that the Government's interest might be protected, but now the Lists have been prepared and finally approved, this officer has no further interest in the figures entered, which become the basis upon which the Government's contribution is made. The Act does not extend to Northern Ireland.

**LOCAL GOVERNMENT ACT, 1929**

Part VI of this Act was the further stage in the de-rating scheme, which gave effect to the relief by exempting agricultural land and buildings from assessment entirely, and relieving industrial properties and freight transport undertakings of 75 per cent of the rate burden.

In future, agricultural land and buildings will not be recorded in the valuation lists.

The Act extends the application of the Rating and Valuation (Apportionment) Act, 1928, to industrial hereditaments in which no persons are employed (i.e. owner-occupier, or "one-man" factories). (Sect. 69.)

**AGRICULTURAL RATES ACT, 1929**

The Chancellor of the Exchequer announced in his Budget Speech on the 15th April, 1929, that the Government intended to relieve agricultural land and buildings as from the 1st April,

1929 (six months earlier than enacted in the Local Government Act, 1929). The Agricultural Rates Act, 1929, carried this into effect and made provision for a special grant to compensate local authorities and for certain other purposes in connection therewith. The Act did not extend to Scotland or Northern Ireland.

## DE-RATING APPEALS

There have been a number of important decisions arising out of the Rating and Valuation (Apportionment) Act, 1928. The case of *Hastings (Lord) v. Walsingham R.D.C. Revenue Officer*, [1930] 2 K.B. 278, was the principal agricultural case considered as a test case. In the case of *Moon (Revenue Officer for Lambeth) v. London County Council*, [1931] A.C. 151, the House of Lords decided in December, 1930. that it is the use to which premises are put that must be considered, and not what may be ultimately done with whatever commodity they dealt with that determines whether it is a factory or workshop.

A trainer of racehorses was licensed by a farmer to use grass-land as an exercise ground for horses from December to March each year. The decision of the Assessment Committee that the land was not used mainly for sport or recreation and, therefore, entitled to de-rating as used mainly for agricultural purposes was upheld. (*Jarvis and Dawson v. Cambridgeshire Rural Assessment Committee*, K.B.D., 26th October, 1938.)

A co-operative society included a canteen which was used solely for supplying refreshments to the workers in the laundry. It was held that the canteen was entitled to be de-rated as being part of the industrial hereditaments. (*London Co-operative Society, Ltd. v. Southern Essex Assessment Committee* (1941), K.B.D.)

A canteen some little distance from the factory, exclusively used by the employees of the factory, in which it was held the canteen was an industrial hereditament of itself within the meaning of the Factory & Workshop Act, 1901, and as such was entitled to the benefit of de-rating. (*Simmonds Accessories (Western), Ltd. v. Pontypridd Area A.C. and Another* (1943), K.B.D.)

In the case of a glassware factory, additional land near by but not adjoining was acquired, and a building erected to meet the growth of output of manufacturing goods. It was held that the additional premises not being contiguous, and in view of their use for storage and distribution were not an industrial hereditament. (*James A. Jobling, Ltd. v. Sunderland C.B. Assessment Committee* (1944), C.A.)

**SCOTLAND**

The duties formerly performed by Overseers in England and Wales are in Scotland carried out as regards—

(a) Valuation and Registration, by County and Burgh Councils, through Assessors appointed by them.

(b) The Poor Rate, etc., by the various local authorities concerned.

(c) Other matters by the Parish Councils.

The local rates which are levied on the annual value of heritable property as appearing in the Valuation Roll.

The system of rating in Scotland is dealt with in Chapter XXXII.

**NORTHERN IRELAND**

The work formerly carried out by the Overseers in England is in Ireland discharged by the County Councils.

## CHAPTER XXIX

### FINANCIAL ADMINISTRATION AND AUDIT

#### I. FINANCIAL CONTROL

UNDER Sect. 85 (3) of the Local Government Act, 1933, local authorities are given a general power of appointing committees and of determining the number of members of each committee, and their term of office. They may delegate, with or without restriction, any of their functions to committees except the power of levying, or issuing a precept for, a rate, or of borrowing money. They may also make standing orders for regulating the proceedings of such committees. The power which authorizes local authorities to appoint persons who are not members of the local authority on committees does not extend to a committee for regulating and controlling the finance of the authority or their area. The importance of this exception in the sphere of financial administration is too obvious to need elaboration.

**Finance Committees.** Every County Council is required—

(a) To appoint a finance committee for regulating and controlling the finance of their county. (Local Government Act, 1933, Sect. 86 (1).)

(b) To have submitted to them at the beginning of every local financial year an estimate of their receipts and expenses during that financial year. (Local Government Act, 1933, Sect. 182 (1).)

(c) To estimate half-yearly the amount to be raised by means of contribution or rate. (Local Government Act, 1933, Sect. 182 (2).)

If before the expiration of the first six months it appears that the amount required will be larger or smaller than the estimates, the estimates may be altered accordingly.

Metropolitan Borough Councils also are required by Sect. 8 (3) of the London Government Act, 1899, to appoint a finance committee.

Although there is no statutory duty placed upon any other council to appoint a Finance Committee such a committee is usually appointed in practice, except in the case of the smaller authorities.

The Ray Committee recommended that there should be a statutory provision requiring the appointment of a finance committee by every local authority, but effect has not been given to that recommendation in the Local Government Act, 1933.

In the case of a County Council the Finance Committee occupies

a strong position in relation to expenditure, as Sect. 86 (2) of the Local Government Act, 1933, provides that "no costs, debt or liability exceeding fifty pounds shall be incurred by a County Council except upon a resolution of the council passed on an estimate submitted by the Finance Committee." Proposals involving expenditure require examination not only from the executive or administrative point of view, but also on financial grounds, particularly in relation to the general financial policy of the council.

The Method of Control of Finance exercised by the London County Council may be taken as illustrative of the control exercised by other local authorities in the country.

There is some uncertainty as to the extent of the powers vested in Finance Committees of some local government authorities, but so far as the London County Council are concerned, the Orders of Reference to Committees and the Standing Orders clearly indicate that the council intend that the executive committees shall be responsible for the proper administration of the various services, that the Finance Committee shall watch the work of every committee from the standpoint of financial control, and that the council reserve to themselves ultimate control over the operations of all committees, including expenditure. Control over expenditure, therefore, is applied at three points—

- (i) by the Executive Committees;
- (ii) by the Finance Committee; and
- (iii) by the Council.

(i) **The Executive Committees.** Expenditure depends partly upon policy, which is decided by the Council, and partly upon the methods by which the policy, once settled, is carried out by the various committees. The Finance Committee cannot be expected to have such a wide and intimate knowledge of the work and requirements of all the services as is possessed in regard to each service by the responsible committee, and it follows, therefore, that the measures taken by the Executive Committee to secure efficiency and economy must form a necessary and essential link of financial control. It is only by the application of this fundamental principle that effective control can be established, and efficient Executive Committees undoubtedly take all possible steps in this direction.

(ii) **The Finance Committee.** Proposals involving expenditure require examination not only from the executive or administrative point of view, but also on financial grounds, particularly in relation to the general financial policy of the council.

If necessary, the Finance Committee obtain from the officials information and explanations on matters of fact, but questions

of policy arising out of the Finance Committee's investigations are the subject of negotiation with the committee concerned. The control thus exercised in no way interferes with the duties which properly come within the scope of the administrative responsibility placed upon the Executive Committees, nor should it lead to any weakening of that responsibility, which rightly rests upon them.

The main function of the Finance Committee in regard to expenditure is to keep a constant watch on all the services to see that no money is voted by the council without full knowledge of its necessity and of its financial consequences, and that money so voted is applied to the approved purposes and is spent in accordance with the directions of the council or the committees, as the case may be.

The Finance Committee may, of course, influence future expenditure. Their effectiveness therein lies mainly in the moral effect of their criticism, made in the light of their knowledge of the financial operations of the council as a whole, a knowledge which is based on the examination of the proposals of the Executive Committees and on the information furnished by those committees. If a Spending Committee is in favour of expenditure notwithstanding an adverse opinion on the part of the Finance Committee from the financial point of view, the final decision must rest upon the council themselves after due consideration of the views put forward by the respective committees.

(iii) **The Council.** The greatest opportunities for effecting economies are afforded before expenditure is authorized, and the most effective control is that exercised by the examination of estimates before their final approval. Under the present system, control by the council consists mainly in laying down precise limits of expenditure upon the consideration of estimates, and the one certain way in which the council can exercise financial control is by scrutinizing closely all estimates of costs.

**Rate Estimates.** The preparation of rate estimates is made a statutory duty of a rating authority by Sect. 12 of the Rating and Valuation Act, 1925. Sufficient revenues must be raised to meet past outstanding and the current year's expenditure. Under Sect. 228 (b) of the Local Government Act, 1933, it is the duty of the district auditor to surcharge upon any person responsible therefor, any loss of interest sustained or charge for interest incurred by a local authority through wilful neglect or default to make or collect sufficient revenues for the year, including previous expenditure unprovided for. The previous illegality of including expenditure incurred over six months earlier has been removed. Under the Local Government Act, 1933, Sect. 215,



money may be borrowed by bank overdraft or other methods to provide temporary funds pending the receipt of current revenue.

It is competent to include in the estimates any sum necessary to provide for contingencies or a working balance, but a local authority is not empowered to provide a reserve for equalizing rates over a period of years. (*Morgan v. Cardiff Corporation*, 1933.) Provision of reserve funds out of rate revenue is illegal apart from special statutory sanction. Although the principle of "virement" which operates in national financial control is not generally applicable to local government finance, during the consideration of the annual estimates any departure from the estimated expenditure on sub-heads of account may be inquired into and explanations obtained.

Estimates should be prepared on income and expenditure lines. As soon as practicable after the close of the calendar year the executive departments should prepare their schedules showing particulars of actual expenditure and income for the first nine months of the current financial year, together with probable expenditure and income for the final three months. Preliminary figures may then be completed for submission to the February meetings of executive committees and particulars supplied for the detailed draft estimates of all departments. The preparation of estimates of capital expenditure are equally important. These should be prepared and sanctioned before the revenue estimates are compiled in order to secure that the correct figures for the year's loan charges are included.

The submission of an estimate by the Finance Committee to the council may be accepted as an indication that they approve the same and that they concur in the proposed expenditure, unless they report to the contrary. The responsibility for the proposals rests with the Executive Committee, who report to the council in detail; and where the Finance Committee are satisfied from the financial standpoint, a further report by the Finance Committee on each of the numerous proposals submitted is clearly not necessary, unless special considerations of a financial character are involved. After the Finance Committee has approved the estimates of the various executive departments the chairman of the Finance Committee submits the annual estimates of income and expenditure to the council for approval. This budget is usually composed of votes, in a similar manner to the votes which are submitted to the Committee of Supply of the House of Commons. During the discussion of these estimates the chairman of each committee has to justify the estimates of expenditure put forward by his committee. The final responsibility rests with the council who can, of course, accept, reduce,

or reject the estimates of expenditure on any particular item.

It is only when the council has approved of the estimates of all committees that it is possible to fix the amount of the rate poundage for the financial year. Every general rate is made upon the date upon which it is approved by the authority in respect of a period commencing immediately after the expiration of the last preceding period in respect of which a general rate was made. (Rating and Valuation Act, 1925, Sect. 4.)

Except in the case of County Councils, no uniform period has been prescribed for a rate. The Finance Committee of County Councils must submit *annual* estimates. There is much diversity of opinion and practice as to whether there should be annual or half-yearly estimates. The general view is favourable to yearly estimates as the rate may be collected in two or more instalments or half-yearly rates may be made on the one annual estimate. In this way any benefit which may accrue to the ratepayers can be secured without the duplication of work necessitated by half-yearly or quarterly estimates. The rate should be made at the first council meeting of the financial year convened early in that year as rates are not enforceable during the period elapsing between the completion of an old rate and the making of a new rate.

**Rate Rationing.** The growth of public expenditure during recent years, particularly during the years of economic difficulties and financial stringency has encouraged the growth of the idea of fixing a rate poundage to be levied and making expenditure conform to the rate income produced thereby. The various Executive Committees may be left to make provision for their proportion of the total "cut" or the cuts may be allocated on the basis of some scheme over all the services. Alternatively, it is possible to avoid any consideration of departmental estimates by allocating a proportion of the total income among the committees, and leaving them to utilize the funds at their disposal to the best advantage. Rate rationing, however, appears to be contrary to the spirit of the Rating and Valuation Act, 1925, Sect. 12. The serious increase and fluctuation of poor relief expenditure during recent years made the policy impracticable in distressed areas.

**Rate Stabilization.** It may be decided to fix a certain rate in the £ for a period of years. A five years' plan may be adopted during which no additional expenditure which will increase the fixed or stabilized rate will be sanctioned. Local manufacturers may then make quotations without the trepidation that probable rate increases may upset their calculations.

The tendency is for a rate stabilization scheme automatically to end when the time arrives when it is possible to reduce the fixed rate. On the other hand, consideration might then be given to those works or schemes which may have suffered during the period of restricted spending.

**Budgetary Control.** During recent years railway and other large trading companies have adopted a method of budgeting, not on the basis of past expenditure, but on the estimated income of the coming financial year having regard to the ratio between prices and costs. Such a system might be adopted in connection with municipal trading undertakings, and is receiving consideration by the larger authorities.

**Periodical Statements of Income and Expenditure.** The control of their expenditure and the reduction of the risk of over-spending to a minimum may be facilitated if Spending Committees have submitted to them, from time to time, statements showing the amount of their expenditure to date compared with the proportion of their estimated expenditure included in the rate calculation. Such a statement is enhanced by considering percentage figures and by comparison with similar figures for the preceding financial year. Such statements have to be considered with caution, however, and due allowance made for the fluctuation in the proportion of the year's total requirements from time to time.

Thus, it will be realized that the amount included for snow clearance will be required during winter, if at all; baths income will be received almost entirely during the summer.

**Supplementary Estimates.** Although supplementary estimates may be considered to be inadvisable their value and importance should not be overlooked. Any severe criticism of supplementary estimates may cause a Spending Committee to increase the margin so well known to be provided in the annual estimates and the spending of the balance towards the end of the year.

### RESERVE FUNDS

A Reserve Fund is a fund raised from rates or profits which are capitalized for the purpose of improving the financial stability of the local authority or concern in question. Such Funds need statutory authority.

A local authority cannot use the Reserve Funds of public utility undertakings by applying the money for the carrying out of works in connection with the repairing of roads so as to provide work for the unemployed. (*A.-G. v. Oldham Corporation*, 1936, 34 L.G.R. 505; 2 All E.R. 1022.)

### SURPLUS OF THE GENERAL RATE FUND

Any surplus must be taken into consideration when estimating

the rate for the next year. There is no power to create a reserve with such a surplus. A borough council may apply a surplus for the benefit of the inhabitants and improvement of the borough. (Local Government Act, 1933, Sect. 185 (3).) It may add to an existing working balance. (*Morgan v. Cardiff Corporation*, 1933.)

## II. ACCOUNTING SYSTEMS

The accounts of all but the smallest local authorities are now generally kept on the double-entry system and on income and expenditure lines. Until comparatively recently much confusion was caused by many local authorities clinging to antiquated methods of book-keeping. The fault did not lie entirely with the local authorities, however, as Westminster and Whitehall bolstered up such methods by vague terminology and faulty nomenclature in Acts of Parliament and Departmental Orders frequently requiring nothing more in departmental returns than an analysis of cash.

The anachronism "receipts and expenditure" is still to be found in—

- (a) The Local Government Board's Accounts Orders, e.g. 1880.
- (b) The Education Act, 1944.
- (c) The Rating and Valuation Act, 1925, Sect. 54.
- (d) The Poor Law Act, 1930, Sect. 119.

The Departmental Committee appointed in 1906 to inquire into the Accounts of Local Authorities and who issued their Report in 1908, recommended the extension of the "income and expenditure" system to the accounts of all local authorities other than Overseers of the Poor, Parish Councils and Meetings, and Lighting Inspectors.

The Local Government Act, 1933, refers to "income and expenditure." (Sects. 182 and 244.)

Although a system restricted to actual cash received and paid has the merit of simplicity, the advantage is obtained at the cost of completeness. Accounts limited to cash transactions do not include every part of a transaction as and when it takes place, but only that part represented by the cash payment. Purchases are not recorded until paid for, and the acquisition of stores on delivery may not be recorded. To safeguard materials a stores account should be kept in addition to the cash records, but even so a dual system of cash and stores accounts is still incomplete. Only by income and expenditure methods will stores values be recorded as delivered and taken on charge.

A true statement of profit and loss cannot be produced from receipts and payments records, and they do not lead up to a balance sheet showing the true financial position. Payments

may be deferred so as to exclude them with a view of reducing the succeeding rate.

On the other hand, the income and expenditure system takes account of every step in a transaction as it takes place, providing protection against negligence and irregularity. If ratepayers of any particular year are to be charged with the cost of the operations of that year, the rate estimates should be framed on an income and expenditure basis. The possession, acquisition, conversion, and alienation of all assets and values during the accounting period are duly recorded. Accrued proportions of items such as rent, rates, taxes, insurance, salaries, wages, interest, etc., are accounted for quite irrespective of the date of receipts or payment in cash.

Objections are sometimes made against the income and expenditure system on grounds of the undesirability of including uncertain estimates in final records because actual values cannot always be ascertained. The nearest ascertainable values, subject to subsequent adjustment, are surely better than the omission of items of a substantial nature which have to be subsequently included in the records of a future period. Another objection has relation to the possible delay in closing the accounts for a period due to the necessity of ascertaining the items unpaid or not received at the date of making up the accounts whereas records of cash receipts and payments can be closed without delay. Under a proper system of administration no great difficulty in this respect is found in practice.

In the Housing Accounts Order, issued on the 31st March, 1920, the Ministry of Health provided for the accounts to be kept on the basis of "income and expenditure," and this is the term used in subsequent Accounts Orders. The Home Office and the Minister of Agriculture and Fisheries now prescribe the "income and expenditure" basis for returns and accounts required by them. Accounts which are subject to audit by the district auditor are largely subject to methods prescribed by the Orders issued by the Ministry of Health, and are governed by the form of Financial Statement to be submitted to the District Auditor.

The form of account books to be kept has not generally been prescribed by the Minister who is usually satisfied with the form of the final accounts. Prior to the transfer of poor law administration to County and County Borough Councils the books and records to be kept by boards of guardians were rather meticulously prescribed, but the form of primary records is no longer controlled. Certain books to be kept by Rating Authorities are prescribed and are dealt with later.

Statutory Rules, Regulations, and Orders relating to the accounts of local authorities have been issued by the Ministry of Health or its predecessors, the Local Government Board. The following are in operation—

1. Urban District Councils General Accounts Orders, 22nd March, 1880, and 8th March, 1881.
2. Joint Hospital, Water, Sewerage, and Drainage Boards Orders, 23rd December, 1892, and 31st July, 1895.
3. Port Sanitary Authorities Accounts Order, 28th February, 1896 (now Port Health Authorities).
4. London Rate Collection Accounts Order, 26th March, 1901.
5. Housing (Assisted Schemes) Accounts Order, 31st March, 1920. Amended 1931 and 1934. (This became obsolete with the passing of the Housing Act, 1935.)
6. Education Accounts (Annual Statement) Order, 13th December, 1921.
7. Financial Statements Order, 1921; and Financial Statements (District Audit) Regulations, 1938.
8. Accounts (Payment into Bank) Order, 1922.
9. Rate Accounts (Rural District Accounts) Order, 15th September, 1926.
10. Rate Accounts (Borough and Urban District Councils) Order, 30th September, 1926.
11. Accounts (Boroughs and Metropolitan Boroughs) Regulations, 23rd January, 1930.
12. Public Assistance Accounts (County Councils) Regulations, 23rd January, 1930.
13. The Audit Regulations, 20th May, 1934.
14. Local Authorities (Audit of Accounts) Order, 10th November, 1934.

15. Catchment Boards (Financial Statement and Audit of Accounts) Order, 1931.

16. Land Drainage (Rates and Rate Book) Regulations, 1937.

The Electricity Commissioners have issued a Form of Statement of Electric Lighting Accounts under an Order issued by the Board of Trade in 1919. The Board of Trade have power to prescribe a form of accounts for gas undertakings but the power has not been exercised.

The improved technique in the modern Orders of the Ministry of Health is producing greater uniformity in the accountancy methods of local authorities. There is still considerable lack of uniformity regarding the form in which the abstracts of accounts of local authorities are published. As a result one can never be certain in making comparisons that like is being compared with like.

The Institute of Municipal Treasurers and Accountants (Incorporated) have investigated the possibility of the standardization of accounts and abstracts of accounts. They have published a Model Form of Abstract for General Rate Fund Accounts. It is drawn up upon an alphabetical basis. Standardized forms of final accounts have also been issued for some services, e.g. Mental Hospitals, Sale of Electrical Fittings, Motor Omnibuses, and Consolidated Loans Funds, and a standard form of Abstract of Accounts was published in June, 1937, but covering only the General Rate Fund. The purposes which the abstract of accounts can serve and the form its publication should take are dealt with later.

### SPECIAL FEATURES OF THE ACCOUNTS OF VARIOUS AUTHORITIES

**Parish Meetings and Councils.** Forms of Financial Statements have been prescribed for Parish Meetings (22nd March, 1898), and for Parish Councils (20th April, 1900). The expenditure is divided into two classes, viz.—

1. General Parochial Expenses.
2. Expenses under the Adoptive Acts.

**Rural District Councils.** A Form of Financial Statement has been prescribed (4th October, 1899). Expenses are classified as (1) General or (2) Special.

For Rating Accounts the Rate Accounts (Rural District Councils) Order, 1926, issued by the Minister of Health must be followed.

The requirements are almost identical with those described later for urban authorities except that there is provision for income from special rates in addition to the General Rate.

The special feature of the accounts of Rural District Councils is the necessity to charge out on any contributory place the proper proportion of the special expenses they must bear, e.g. drainage. These may be spread partly or entirely over the whole district (Local Government Act, 1933, Sect. 190).

**Urban District Councils.** A Form of Financial Statement has been prescribed (1921 and 1938). The Accounts Order of the 22nd March, 1880, is considered to be out of date, and consent has been obtained by many councils to depart from its provisions. The following records are prescribed—

#### (A) CLERK'S ACCOUNTS.

##### 1. Minute Book—

Orders on Treasurer.  
Receipts and Payments.  
Allocation of Charges.

2. Ledger—governed by the Financial Statement and showing separately—
  - Public Works.
  - Private Works and
  - General Accounts.
3. Loan Accounts.
  - Treasurer's Receipts and Payments.
  - Lender Accounts.
  - Advances.
  - Repayments.
  - Interest.
  - Permanent Works.
  - Instalments.
  - Interest.
  - Sinking Fund.
4. Allocation of Charges.
  - District (now General Rate) Fund.
  - Private Improvement Expense.
  - Water Rate.
  - (Highway Rate).
5. Highways Repairs and Expenditure—
  - Manual Labour.
  - Team Labour.
  - Materials.
  - Tradesman's Accounts.
6. Order Check Book—
  - Orders.
  - Counterfoils.
  - Forms of Invoices.

(B) TREASURER'S ACCOUNTS.

Receipts and Payments—Quarterly or as desired by council.

(C) SURVEYOR'S ACCOUNTS—

1. Wages—
  - Names.
  - Days employed.
  - Where employed.
  - Rate of pay.
  - Earnings.
  - Date of payment.
  - Signature.
  - Surveyor's Certificate.



2. Highways Repairs.
  - Manual labour.
  - Team labour.
  - Materials.
3. Stores.
  - For each article—
 

Quantities.	}	Receipts and Issues.
Prices.		
Costs		
Places and purposes.		
4. Cash Account.
5. General Receipts Check Book.

(D) ALL ACCOUNTING OFFICERS—  
Cash Book.

(E) RATE BOOKS—superseded by Rate Accounts Order, 1926. The Rate Accounts (Borough and Urban District Councils) Order, 1926, provides for keeping the following records—

I. *Rating Authority.*

1. Ledger Accounts.
  - Personal Accounts.
    - Each Officer.
    - Ratepayers.
      - (a) Rates.
      - (b) Costs.
  - Precepting Authorities.
  - Impersonal Accounts.
    - Valuation Expenses.
    - Cost of Collection.
    - Rate Income.
  - Final Accounts—
    - Each Rate Area.
    - General Rate Income Appropriation.
    - Financial Adjustments.
2. Continuous records of Rate Products.
3. Rate Charge Book or Rate Book (in prescribed form).
4. Summons List and Costs Account Book.
5. Rate Arrears Book.
6. Register of Receipt Books.
7. Rate Produce Book.

II. *Officers.*

Rate Account Book.  
 Cash Account.  
 Collecting and Deposit Book.  
 Receipt Books.  
 Irrecoverable Arrears List.  
 Recoverable       "       "  
 Compounding Agreement Forms.

It is not usual to have any expenditure chargeable otherwise than over the whole of an urban district, although there is in some cases preferential rating for which provision has to be made.

**Borough Councils.** It is only accounts which are subject to audit by the district auditor of the Ministry of Health to which the regulations of the Minister apply.

The Rate Accounts Order, 1926, applies in the same way as to District Councils.

The Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930, dated 23rd January, 1930, made by the Minister of Health, apply to all borough accounts (other than Rating Accounts) subject to audit by a district auditor. The part of the accounts liable to government audit must be kept in a separate set of books.

The regulations provide for the following records—

i. Ledger Accounts, grouped with regard to their nature and bringing together the total required for entry in epitome of accounts. Each item to be adequately referenced to its corresponding debit or credit. The chief financial officer is responsible for keeping and balancing the ledger on the double-entry system.

Accounts to be kept are—

(a) Personal Accounts.

Cash Book (bank transactions).  
 Officers dealing with cash or materials.  
 Debtors.  
 Creditors.

(b) Impersonal Accounts.

Income and Expenditure Accounts, for each item in epitome of accounts.

(c) Final Accounts.

Revenue Income and Expenditure.  
 General Rate Fund.  
 Each service required by law to be separately accounted.  
 Each part of the borough for which separate accounts are needed.  
 Each reserve, pension, or other fund of which continuous account has to be kept.

## (d) Loan and Capital Accounts.

Capital Asset Account for each separate work or asset.  
Capital Provision Account for capital assets provided otherwise than by loan.

Deferred charge account for loan expenditure not providing a permanent asset.

Capital Receipts Account for capital receipts otherwise than by loan.

## (e) Balance Sheets showing the final position of each of the funds or revenues with capital and revenue items separately balanced and fund surpluses or deficiencies clearly distinguished. An aggregate Balance Sheet is required where there is more than one Balance Sheet.

**County Borough Councils.** The accounts will be subject to the regulations described for non-county boroughs. The Regulations of 1930 (described above) will apply to the Education, Public Assistance, and Motor Taxation Accounts, and to accounts under the Probation of Offenders Act (if any).

**County Councils.** A form of Financial Statement is prescribed (1904 and 1938). The Public Assistance (County Councils) Regulations, 1930, apply to the public assistance accounts. The provisions are almost identical with the regulations described with reference to boroughs except that there are no provisions respecting Loans Accounts and Balance Sheets.

The expenses of County Councils are divided between General County Purposes, i.e. those applicable to the whole area, and Special County Purposes, i.e. those applicable to certain parts of the county only, e.g. roads. The peculiar feature is the charging of special expenses on those areas liable to contribute thereto and in the proper proportion and only on such areas. The allocation of expenses to general and special purposes is probably not alike in any two counties.

For Petty Sessional Divisions, the Magistrates Clerk's Accounts are subject to the Summary Jurisdiction Rules, 1915. From an accountancy standpoint the Rules are deficient in so far as there is no provision for a Cash Book to be kept, for proper receipts to be given or vouchers obtained and no provision is made for audit.

Education Authorities are required to conform to the Education Accounts (Annual Statement) Order, 1921 (13th December).

Since the transfer of the functions of Boards of Guardians to the councils of counties and county boroughs under the Local Government Act, 1929, the Public Assistance Accounts Order of 1867 is no longer binding on the public assistance authorities. This Order provided for the meticulous control of *primary* records.

The regulations of 1930 do not deal with primary records in detail. The system laid down in the Order may be followed, and for some time after the transfer it was necessary to continue to operate the provisions of the Order, but many public assistance authorities have reorganized the system of institutional and stores accounting and adopted methods in accordance with modern principles.

**Costing Returns.** Considerable attention has been given recently to the possibility of increasing the efficiency of local administration by the comparison of local costs. The difficulty with regard to the ineffectiveness of comparing authorities of different size and conditions has led to the consideration of arranging standard costs for groups of local authorities. During recent years the Minister of Health has extended to various departments of local authorities the scope of their activities in obtaining costing statements. The following returns in relation to costs are now required—

Collecting and Disposal of Refuse.  
 Street Cleansing.  
 Sewage Disposal Works.  
 Residential Treatment of Tuberculosis.  
 Maternity Homes and Hospitals.  
 General Hospitals.  
 Poor Law Institutions.  
 Mental Hospitals.

**Other Statutory Returns.** Many other returns with reference to accounts are now required from local authorities. The more important of these and the departments requiring the returns are shown in the following table—

Epitome of Accounts . . . .	Ministry of Health
Sinking Fund Returns . . . .	" "
Expenditure on Poor Relief . . . .	" "
Loans and Stock Returns . . . .	" "
Rates Levied . . . .	" "
Mental Hospitals Accounts . . . .	Board of Control
Expenditure on Education . . . .	Ministry of Education
Probation of Offenders Accounts . . . .	Home Office
Electricity Works Expenditure . . . .	Electricity Commissioners

The Ministry of Health issue each year the Local Government Financial Statistics in three Parts, viz. Part I, Poor Relief; Part II, London and County Boroughs; Part III, Counties outside London. A Summary for all Local Authorities is published separately.

### III. AUDIT, PUBLICATION AND INSPECTION OF ACCOUNTS

The audit of the Accounts of local authorities is now performed by—

- (a) District Auditors, or
- (b) Borough Auditors, or
- (c) Professional Auditors.

Before 1834 Churchwardens and Overseers were required to render accounts to two Justices of the Peace four days before the end of the year, and such accounts were to be verified on oath and open to inspection. Justices were empowered to examine accounts, and disallow or reduce items of expenditure. A few parishes had an audit enforced by local Act of Parliament.

The Poor Law Amendment Act, 1834, made provision that, under an Order of the Poor Law Commissioners, the Guardians of the Poor were to appoint a "competent person" to be Auditor to hold office until removed either by the Commissioners or by the Guardians with the consent of the Commissioners. The auditors possessed power of disallowance and surcharge, and were required to report to the Commissioners. Audit by Justices remained, and the Justices had power to annul any disallowance or surcharge made by the auditors.

The Poor Law Amendment Act, 1844, deprived the Justices of their audit powers. Auditors were to be appointed by the Chairman and Vice-Chairman of the Board of Guardians. Poor Law Commissioners were empowered by Order to combine parishes and unions into districts for audit purposes.

In 1868 Parliament directed that future vacancies should be filled by the Government, who at the present time act through the Ministry of Health.

The General Order for Accounts, 1847, substituted half-yearly for quarterly audit. This was supplemented by Orders dated 18th November, 1850, and 16th March, 1854, and was finally rescinded by the General Order for Accounts, 14th January, 1867. The General Order of 1867 dealt with Poor Rates only. On 20th March, 1879, the Other Rates Order was issued, which governed the method of keeping accounts relating to rates which were levied separately. On 26th March, 1901, the Metropolitan Rates Order was issued under the London Government Act, 1899, and the London Rating Scheme Order, 1901. The powers contained in the Local Authorities (Audit) Order, 19th March, 1928, have been superseded by the Audit Regulations, dated 10th November, 1934, issued by the Minister of Health, under Part X of the Local Government Act, 1933. This has been

followed by the Audit Stamp Duty Order, 1938, and the Financial Statement (District Audit) Regulations, 1938.

**District Auditors.** The District Auditor is "a competent person" appointed by the Ministry of Health, with the consent of the Treasury, to an audit district in England and Wales.

The District Auditor is usually appointed from the ranks of Assistant Auditors. For the purposes of the audit, the country is divided into five areas. To each area there is an Inspector of Audits; an Auditor, sometimes with Assistant Auditors, is appointed for each county (or, in some cases, for a part of a county or a group of counties) to audit the accounts of all the local authorities within the area for which he is appointed. In 1912 it was decided by the then Local Government Board that Assistant Auditors should, before appointment, be required to show that they have definite qualifications for the post, both by reason of their knowledge of the general administration of the Poor Law and by reason of their professional ability as accountants, and that, as a rule, the possession of such qualifications should be tested by examination or otherwise. The Board accordingly decided that, in future, persons to be eligible as candidates must, as heretofore, be barristers or solicitors, or members of the Institute of Chartered Accountants or of the Society of Incorporated Accountants and Auditors, or of the Institute of Municipal Treasurers and Accountants (Incorporated), or have undergone a course of training with a District Auditor, or have served in the office of the Board, or possess such other qualifications as may be prescribed from time to time. Several Statutes extended the powers of the District Auditors to audit the accounts of various local authorities. The system of borough audit by elective Auditors contained in the Municipal Corporations Act, 1882, continues to apply, however, to the accounts of Borough Councils except in respect of certain boroughs, as described below. All these provisions have been repealed and re-enacted, with modifications, in Part X of the Local Government Act, 1933.

### ACCOUNTS SUBJECT TO THE DISTRICT AUDIT

The Act provides for the District Auditor to audit the accounts of the following authorities and officers—

- County Councils (including London County Council).
- Metropolitan Borough Councils.
- Urban District Councils.
- Rural District Councils.
- Parish Councils.

Parish meetings for parishes having no council.

Any committee appointed by any of the above.

Any joint committee of which the accounts of one or more of the constituent authorities are subject to audit by a district auditor, e.g. Assessment Committee. This applies to boroughs only if all their accounts are subject to district audit.

Any accounts made subject to audit by a District Auditor, e.g. some Port Health Authorities, Visiting Committees of mental hospitals, and some boroughs.

Any borough adopting the system of audit by the District Auditor (as described later).

The Electric Supply Act, 1919, provides that the accounts of Joint Electricity Authorities shall be made up and audited in the same manner as the accounts of County Councils, i.e. by District Auditors. The provisions with regard to audit apply equally with the accounts of an authority to the accounts of any accounting officer.

The Minister of Health may, with the consent of the Treasury, appoint as many District Auditors and Assistant Auditors as he thinks necessary, and may remove any such Auditors. As the staff of a District Auditor frequently includes officers who are not technically Assistant District Auditors the Minister has been empowered to confer on these officers any of the functions of a District Auditor except those of allowance, disallowance, and surcharge.

The Minister assigns to the Auditors their duties, remuneration, expenses, and districts. The remuneration and expenses, as sanctioned by the Treasury, are paid in the first instance out of moneys provided by Parliament. The local authorities whose accounts are audited in this manner contribute towards the cost by stamp duty according to a scale fixed from time to time by the Treasury, after consultation with the Minister and associations of the local authorities concerned. The scale is fixed so as to secure that the duties levied shall be sufficient to meet the cost incurred. Alternatively, the Treasury may, on the application of any authority and after consultation with the Minister, direct that the duty stamp shall be such an amount, not exceeding the amount chargeable under the scale, as the Treasury think fit, having regard to the cost of the audit of the accounts of that authority.

The authority must prepare a financial statement in prescribed form and submit it in duplicate to the Auditor. On each copy the Auditor must certify (1) the amount of the expenditure audited and allowed, (2) that the regulations have been complied with, and (3) the correctness of the statement. The stamp duty chargeable must be affixed to one copy, the stamp cancelled by

the auditor, and this copy sent to the Minister. A fine of £20 may be imposed for failure to comply with these provisions and, notwithstanding the fine, the performance of the duties may be enforced by mandamus. As the local authority may be responsible for this default equally with an officer of the authority, the authority itself is made liable concurrently with the responsible official. All accounts subject to district audit must be made up yearly to the 31st March, or such other date as the Minister of Health may direct, and audited as soon as may be thereafter.

The Minister of Health is empowered to make regulations with respect to the preparation and audit of accounts subject to district audit. This gives him power, *inter alia*, to regulate the method of keeping accounts and their form, and the making of abstracts of accounts. Whereas, before the passing of the Local Government Act, 1933, the Minister's power to make regulations was confined to accounts and audit, they have been extended by that Act to enable him to prescribe the financial transactions to be recorded in the accounts. For wilful breach of the regulations a fine of £5 for the first offence and £20 for any subsequent offence may be incurred. The liability to imprisonment which previously existed has not been re-enacted in the Local Government Act, 1933. The regulations must be laid before Parliament as soon as may be after they are made.

**Procedure.** The Auditor gives the local authority notice of the time of his audit. The local authority must then deposit the necessary books and documents for public inspection at the appropriate office.

Prior to the Local Government Act, 1933, the place of deposit had to be *the* office of the local authority. The term *appropriate* office enables the deposit to be made at some other place than the Town Hall or County Offices. The local authority must give at least 14 days' notice of the deposit by newspaper advertisement or in the case of parish authorities merely by public notice.

For seven clear days before the audit at all reasonable hours, interested persons may inspect the books and documents and take copies or extracts therefrom without payment.

A fine not exceeding £5 may be imposed upon any officer refusing to allow inspection of the accounts.

A similar fine may be incurred for neglect to make up the accounts or for altering them after deposit. A new power has been conferred on the Auditor, however, by the Local Government Act, 1933, whereby he may give his consent to alterations after deposit.

The Auditor may by written notice require production of necessary documents and require accountable persons to appear



before him and sign a declaration as to the correctness of any amount. A fine not exceeding £20 may be imposed for refusal to comply with the auditor's requirements, and making an untrue statement in a declaration is perjury. A local government elector for the area may attend or be represented at the audit and make any objection to the accounts.

It is the duty of the District Auditor to ascertain that all income has been duly accounted for; that all stated expenditure has been incurred; and to determine whether such expenditure has been made in conformity with the law. It is his duty to disallow any item contrary to law, and to surcharge the same upon the person responsible for incurring or authorizing the expenditure disallowed, and to surcharge any such amount or any item of receipt not brought into account upon the person or persons responsible therefor. Any person surcharged may require the auditor to state his reasons therefor in writing.

**Surcharge.** The Auditor may surcharge upon the person or persons responsible any charge for interest or loss of interest arising through failure due to wilful neglect or wilful default to make or collect rates or issue necessary precepts or to collect other revenues. The words "other revenues" are new to the Local Government Act, 1933, and make certain that the power extends to such income as rents from housing estates. (Sect. 228.)

If a local authority has obtained the sanction of the Minister of Health to any expenditure it cannot be disallowed by the auditor. It is not the practice of the Minister to sanction in this manner expenditure of a recurring nature. The provision is useful for allowing expenditure which would otherwise be disallowed but for which a good case may be made out for its reasonableness or necessity.

The Local Government Act, 1933, provides that any local authority, except a parish council, may pay the reasonable expenses of their members and officers attending conferences or their associations and in purchasing reports thereof under regulations presented by the Minister. (Sect. 267.) Regulations were issued dated 5th July, 1934.

The Auditor must make a report to the local authorities within 14 days after completing his audit, and the council must consider the report at their next ordinary meeting. In the case of joint committees and parish authorities the report is sent to the Minister instead of the authority.

An appeal against an Auditor's decision may be made to the High Court or the Minister of Health, except where the amount involved exceeds £500 appeal lies to High Court only. The Court or the Minister may confirm, vary, or quash the auditor's

decision. The Auditor may state a special case for the opinion of the High Court and must do so if directed by the High Court.

On the ground that he acted reasonably or in the belief that his action was authorized by law a person surcharged may apply to the Court or Minister for relief, and may be granted relief wholly or in part. (Sect. 229.)

Any local government elector may appear at the hearing of an appeal and make an objection. (Prior to the passing of the Local Government Act, 1933, this power was conferred on owners and ratepayers.)

An action for a declaration may be brought in which the relators may desire to have certain expenditure declared illegal so that the district auditor could disallow it in the accounts. (*A.-G. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516.) The declaration is not made at the suit of any person unless he has a substantial personal interest in the matter. He need not have any right which he can enforce by some other proceeding. (*Dyson v. A.-G.*, [1911] 1 K.B. 410; 103 L.T. 707.)

A metropolitan borough, in paying an increased price over the contract price for the disposal of all refuse in the borough, was not acting contrary to law, and therefore the surcharge must be quashed. (*Surridge and Others v. Hurle-Hobbs* (1942), K.B.D.)

A surcharge must be paid to the treasurer of the local authority within 14 days of the Auditor's certificate or the decision of the Court or Minister. In default of payment the amount may be recovered either summarily or otherwise as a civil debt. Proceedings for recovery must be commenced within nine months of the date of surcharge or decision of the High Court or Minister.

The payment of additional remuneration for past services is not authorized and may be surcharged by a district auditor as irrecoverable and contrary to law. (*In re Audit (Local Authorities) Act*, 1927, and *In re Magrath*, [1934] 2 K.B. 415; W.N. 156.)

The Local Authorities (Audit of Accounts) Order, 1934, was issued by the Minister and applies to accounts subject to district audit. A copy of the newspaper containing the notice of audit and deposit of accounts must be sent to the auditor. The local authority must advertise completion of the audit within one month of receipt of the auditor's report. An abstract of the accounts as audited must be open for public inspection.

The district auditor is able to take up a strong attitude with a local authority because he is appointed by the Minister. His experience of public accounts makes him an expert in dealing with the accounts of the local authority. He is required to report

upon his audit. On the other hand, he usually pays more attention to the meticulous application of government regulations and legal restrictions than to accountancy principles.

**Audit Stamp Duty Order, 1938.** This Order revises the scales used for the calculating of stamp duty based upon the amount of expenditure audited by the district auditor. The new order operates with regard to accounts for any financial period after the 31st March, 1937.

The scale is fixed so as to provide sufficient income to meet the remuneration, expenses and superannuation allowances of district auditors and their assistants. (Local Government Act, 1933, Sect. 221 (2).) In Circular 1733, which is issued with the Order, the Ministry of Health indicates that the operation of the Local Government Act, 1929, has led to a material reduction in the yield of stamp duty on the old scale and it has not met the cost of the audit service. The accumulated surpluses of past years have made good the losses in the past but these are exhausted.

The new order creates an innovation in having regard to income in addition to expenditure. Items of income which involve inappreciable audit work, such as Government grants, are excluded. Income from precepts upon other authorities, and the corresponding expenditure must be ignored.

Deductions will no longer be made from expenditure in respect of one-half of loan expenditure and grants paid to other authorities. The permissible deductions from income and expenditure in order to arrive at the net figures upon which stamp duty will be calculated are—

- (1) Rates transferred by borough and county borough councils to accounts not subject to audit;
- (2) twice the amount payable in pursuance of precepts;
- (3) receipts from loans;
- (4) loans repaid from money borrowed or to be borrowed;
- (5) capital advances to other authorities by way of loan;
- (6) Government grants;
- (7) expenditure rechargeable to, and income receivable from, the Minister of Transport or other authorities in respect of roads;
- (8) income from the Central Electricity Board in respect of generation of current; and
- (9) receipts from motor taxation licences and payments thereof to the Exchequer.

The new scale is on an *ad valorem* basis commencing at a rate of 5s. where the amount on which the duty is payable does not exceed £25, the rate decreasing on larger amounts until at

£1,000,000 the duty reaches £400, plus £20 for each additional £100,000 or part thereof.

The Commissioners of Inland Revenue may permit the use of adhesive stamps for purpose of paying stamp duty, but under the 1938 Regulations, in cases where the duty exceeds £5 it must be denoted by an impressed stamp.

There is a proviso to the subsection quoted above under which the Treasury may, on the application of any authority and after consultation with the Minister, direct that the stamp duty charged under this section in the case of that authority, shall, instead of being an amount calculated according to the scale, be such an amount, not exceeding the amount chargeable under the scale, as the Treasury think fit having regard to the cost of the audit of the accounts of that authority.

It shall be observed that the exercise of this power is entirely optional, and it is understood that the Treasury have refused to grant this alternative method of charge.

**Financial Statements (District Audit) Regulations, 1938.** The provisions of the Audit Stamp Duty, 1938, have necessitated alterations in the form of Financial Statements in use by the larger local authorities. These Regulations set out the new form to be used in these cases and the amendments in the forms used by authorities and bodies not using the general form or statement.

A schedule must be compiled from the ledger accounts setting out the total amount debited and credited to each account, to form the basis of the Financial Statement. No item must be included more than once in the schedule. The expenditure must be stated without deduction of income connected therewith. This schedule must be submitted to the district auditor and preserved for future reference. The epitome of accounts will serve this purpose and avoid preparation of a separate schedule.

The new form requires the total income and expenditure to be added together. From this aggregate the permitted deductions are made to arrive at the net figure upon which duty is chargeable.

The expenses of the District Auditor upon legal proceedings in connection with the audit may be charged upon the fund to which the accounts subject to audit relate.

The Minister of Health may at any time direct a District Auditor to hold any *extraordinary* audit of the accounts which are subject to district audit. The Auditor must give three days' notice to the authority or persons whose accounts are to be audited. The provisions relating to an ordinary audit apply equally to an extraordinary audit.

**Surcharge of Illegal Expenses.** Rhondda Urban District Council resolved to make a contribution of £30 out of the rates towards the expenses of a march of the unemployed to London in connection with a protest against the Unemployment Assistance Regulations, 1936, notwithstanding the advice of their Clerk that such a payment would be illegal and those voting in favour would be liable to surcharge by the district auditor.

An interim injunction was obtained restraining the Council from applying their rate funds for this purpose. The Council rescinded their resolution and at the hearing of the case submitted to judgment and consented to a perpetual injunction. The Council were ordered to pay costs amounting to £85 which was paid out of the Council's rate funds. Objection to this payment was made at the audit but the auditor refused to make a surcharge, considering the expenditure legal and necessary as it had been paid under an order of the Court of Chancery and a legal contract of service.

The Court held that those members who voted in favour of the resolution to make the donation in spite of the Clerk's warning were guilty of misconduct. The sum of £85 was a loss incurred through their negligence or misconduct and the district auditor ought to have surcharged the amount upon those voting in favour of the resolution. (*Davies v. Cowperthwaite*, K.B.D., 11th May, 1938.)

**Audit of Borough Councils Accounts.** The district audit applies to certain accounts of a Borough Council in the same manner as described above. Those affected are the accounts of a county borough—

1. As Education Authority.
2. As Rating Authority.
3. As Public Assistance Authority.
4. Under the Probation of Offenders Act.
5. For Road Fund Licences.

In the case of a non-county borough, the district audit would apply to the rating accounts and, if the borough is the local authority, to those under the Probation of Offenders Act.

Certain other borough accounts are *examined* by the district auditor in order to ascertain that where grants are payable they are due according to regulations, e.g. Housing and Police.

In a circular dated the 16th May, 1935, the Minister requested county borough councils whose accounts were only partly audited by the district auditor to keep separately from other accounts those in respect of children committed to their care.

In the case of certain boroughs the entire accounts of the

boroughs have been made subject to district audit by statutory provisions, or by election of the Borough Council, e.g. Plymouth and Southampton.

**Professional and Borough Audits.** For the borough accounts not made subject to district audit by law a Borough Council may decide to adopt either the system of district audit or audit by professional accountants. A special meeting for the purpose must be convened by giving not less than one month's previous notice to every member. The resolution must be passed by not less than two-thirds of the members voting and confirmed by the council at an ordinary meeting held not less than one month after passing the resolution.

If the system of audit by the District Auditor is adopted the provisions already described will apply.

Where the system of professional audit is adopted the Auditors must be members of one of the accountancy bodies mentioned in Sect. 239 (3) (b) of the Local Government Act, 1933. A professional auditor must be appointed under the seal of the authority and paid such remuneration as the council think fit. The audit of these accounts will then be conducted on the usual commercial principles.

Having adopted one of these alternative methods of audit there does not appear to be any provision for returning to the old borough audit system or for the substitution of one alternative method for the other. The advantage of having accounts audited by a qualified auditor cannot be over-estimated. He is able to give advice to the local authority on important and highly technical matters such as income tax problems and reserve funds. On the other hand, as he seeks re-appointment at the favour of the Council he may lack the independence necessary to take strong action under certain circumstances. He has no power of disallowance or surcharge.

**Elective and Mayor's Auditors.** Where the foregoing procedure has not been brought into operation the accounts of the borough not subject to district audit are audited by elective Auditors and the Mayor's Auditor.

The elective Auditors are two persons elected from persons qualified to be, but not being members of the council. The election is held on the 1st of March each year or such other date as the council, with the approval of the Minister of Health, may appoint. Nomination and election procedure is the same as that applying to the Borough Council, except the provisions in respect of a casual vacancy occurring within six months before the day of retirement. An elector cannot vote for more than one person to be elective auditor.

The Mayor's Auditor is appointed by the Mayor from among the members of the council.

They are not required to make any report to either council or ratepayers. They have no power of disallowance and surcharge.

The disadvantages of the elective audit system are that the auditors need not have and frequently do not have any accounting qualification or experience. Their prescribed duties are meagre.

The borough accounts not subject to district audit must be made up yearly to the 31st day of March or such other date as the council, with the consent of the Minister of Health, may determine.

Prior to the passing of the Local Government Act, 1933, the accounts had to be made up half-yearly. By this Act the accounting period for all local authorities has been placed on an annual basis. (Sect. 240 (a).)

As soon as may be after the date to which the accounts have been made up they must be submitted to the Auditor or Auditors together with the necessary documents for audit.

Prior to the passing of the Local Government Act, 1933, these provisions were related to the "treasurer's accounts." This terminology created uncertainty as to how far the audit could extend, and it was frequently contended that it could be restricted to a mere examination of the cash receipts and payments. In the case of *Thomas v. Devonport Corporation* (1900), 1 Q.B. 16, it was held that a mere examination of vouchers and payments was insufficient, and the auditors should make a fair and reasonable examination to ensure that there have been no improper payments.

In respect of the accounts under the Public Health Acts each borough Auditor is entitled to be paid such reasonable remuneration not being less than £2 2s. per day employed on the audit, but there is no provision for payment in respect of other accounts audited by him.

After the Audit for each financial year the borough Treasurer must print an abstract of the accounts for the year.

Prior to the passing of the Local Government Act, 1933, the requirements was a *full* abstract. The omission of the word "full" avoids the necessity for the publication at considerable expense of excessively voluminous abstracts giving unnecessary details. Owing to the statutory abstract of accounts being compiled in a manner which the ordinary councillor and elector cannot readily understand, the larger towns are now publishing a small brochure setting out, in a form in which the information can be more easily acquired, the salient features of the financial operations of the local authority.

**Inspection of Documents.** The accounts of every local authority and the treasurer thereof must be open at all reasonable hours for inspection by any member of the authority who may make a copy or extract therefrom without charge. The abstract of accounts of every local authority and the treasurer thereof and any report made by an Auditor thereon must be open for inspection at all reasonable hours by any local government elector for the area who may make a copy or extract therefrom without charge, and copies of the abstract and report must be supplied to him at a reasonable price.

In the case of *Braddock v. Moon*, tried before the Liverpool stipendiary magistrate on the 10th November, 1933, a member of the Liverpool City Council brought a summons against the Town Clerk as the officer responsible for the custody of the city's documents for obstructing him from making an inspection of vouchers relating to allowances paid to councillors. The Finance Committee passed a resolution that a return containing the desired information should be supplied. Before the return was issued the councillor demanded production of the vouchers. The defence claimed that the right only extended to the treasurer's abstract of accounts and the councillor's remedy, if any, was by mandamus. In a considered judgment the learned stipendiary refused to convict, and stated that the councillor's remedy, if any, was not to be found in the method he had adopted but, as he thought the prosecutor had a right to inspect, he did not order him to pay costs, and offered to state a case if requested.

The wording of Sect. 283 (4) of the Local Government Act, 1933, differs slightly from that of the repealed Sect. 233 (3) of the Municipal Corporations Act, 1882, which applied only to the treasurer's accounts, and gives the right of inspection to the council as distinct from the individual member of the council. It is still obscure whether the right applies to books and documents or merely to the final accounts.

In the case of accounts subject to district audit no such limitation applies, although the right of inspection of vouchers, etc., can be exercised only during the seven days prior to audit.

A ratepayer is not entitled to inspect the application forms of persons who apply for grants on behalf of their children. Such forms are not "vouchers" within Sect. 224 (1) of the Local Government Act, 1933, though they may be inspected by the auditor under Sect. 225 (1) of that Act. (*R. v. Monmouth C.C. ex parte Smith* (1935), 51 T.L.R. 435 (Div. Ct); 153 L.T. 338.)

A ratepayer may nominate an accountant to inspect the books and accounts of an authority on his behalf. (*The King v.*



*Bedwellty U.D.C. ex parte Price* (1934), 1 K.B. 333; 98 J.P. 25; 31 L.G.R. 430; 150 L.T. 180.) Mandamus is the proper remedy to enforce inspection. (*Ibid.*)

The minutes of proceedings of a local authority must be open at all reasonable hours to the inspection of any local government elector on payment of a fee not exceeding 1s., and he may make a copy or extract therefrom.

A local government elector may also at all reasonable hours inspect any order for the payment of money made by the local authority.

The freeman's roll of a borough must be open for public inspection at all reasonable hours, and the Town Clerk must supply copies at a reasonable price.

A fine not exceeding £5 may be incurred by failing to comply with these provisions.

**Abstracts of Account.** A model abstract of accounts should supply the following information—

1. A Table of Contents.

2. The Epitome of Accounts—Form H.31 supplied to the Minister of Health.

*Table*

*Particulars*

A. General Statistics.

Population, Rateable Value, Total Rate in the £.  
Produce of a penny rate.

B. Rate Fund Services—Income and Expenditure with appropriate rate poundage for each service.

C. Trading Services—Income and Expenditure.

D. Special Funds—Income and Expenditure, e.g. Reserves, Pensions, Insurances, Trust, Charity, etc.

E. Aggregate Rate Fund Income and Expenditure.

F. Loan and Capital Accounts.

Receipts and Expenditure, Balances.

Loans Outstanding and Sinking Funds for each service.

H. Statement of Government Grants.

3. In respect of each Fund and every subsidiary account in each Fund, wherever appropriate, there should be shown—

(a) Revenue Account.

(b) Net Revenue Account.

(c) Net Revenue Appropriation Account.

(d) Reserve or Renewals Funds Account.

(e) Sinking Fund Account.

(f) Capital Account.

(g) Balance Sheet.

4. An Aggregate Balance Sheet of all Funds.

5. Statement as to Loans raised and unpaid, and provisions for future repayments. This should show in detail for each purpose and in the aggregate—

- (a) Powers obtained.
- (b) Powers exercised.
- (c) Provision for repayment.
- (d) Net debt outstanding to be provided for.

6. Graphs and diagrammatical representation of the accounts serve a useful purpose.

7. A clear and complete detailed Index.

8. Some authorities include the Estimates for the next financial year.

9. Sometimes a Report by the Treasurer directing attention to matters of special importance together with the Auditor's Report are included.

**Standardization of Accounts.** The utility of published accounts of local authorities should not end with the supplying of information locally to councillors and electors. One of the most effective methods of securing economy in local administration is that of comparing the scope and cost of common services between one area and another. Such comparisons are valid only when like is being compared with like.

The varying provisions of Acts of Parliament and regulations of central departments have hindered the co-ordination of the accountancy practices of local authorities in past years. It is interesting to notice and significant in its operation that the regulations of recent years have made for greater uniformity in the accounts of local authorities.

The "Epitome of Accounts" required by the Minister of Health has recently been revised, and now provides a more serviceable basis for comparing results between authorities.

Considerable doubt as to the wisdom of standardization is expressed by some persons. The extreme rigidity of the regulations controlling the old poor law primary records and accounts was an example of the manner in which standardization may adversely affect accounting practice. It should be particularly observed that the aim of standardization is to ensure that the final accounts have been prepared along uniform lines.

The chief requirements are to ensure uniformity regarding—

- 1. Classification of income and expenditure.
- 2. Sub-division of main accounts.
- 3. Form and structure of the Balance Sheet.

Some local authorities classify income and expenditure according to committees. This is undoubtedly very undesirable because the functions of committees differ between authorities, and it is contended that the main classifications should be according to functions. The ideal classification of services is a controversial subject, and is receiving the consideration of qualified technical

experts with a view to the production of a classification which may be standardized as the most suitable for its purpose. The following subjective classification is submitted without any claim to perfection but to illustrate the object of standardization—

1. Public Health.
2. Housing.
3. Public Protection.
4. Registration of Electors.
5. Public Assistance.
6. Property and Estate.
7. Public Education.
8. Recreative Services.
9. Administration of Justice.
10. Legal and Parliamentary Expenses.
11. Administration Expenses.
12. Rates and Credits.
13. Public Utility Services.
14. General Exchequer Contribution.

Main headings, as few as possible in number consonant with expediency, having been formulated within which all income and expenditure will fall, sub-headings have to be decided upon.

1. PUBLIC HEALTH may be taken for example, in which case there might be the following sub-headings—

(a) *Sanitary Services.*

- Sewers and Sewage Disposal.
- Collection and Disposal of Refuse.
- Public Conveniences.
- Food Protection.
- Diseases of Animals.
- Cemeteries and Crematoria.
- Public Washhouses.
- River Pollution Prevention.
- Destruction of Rodents.

(b) *Medical Services.*

- Institutional Treatment.
- Maternity and Child Welfare.
- Notification and Prevention of Diseases.
- Mental Treatment.
- Blind Welfare.

(c) *General Administration.*

- Salaries and Wages.
- Other Expenses.

Expenditure under each of the sub-headings will be analysed in standardized sequence, e.g.—

Salaries and Wages.

Plant and Machinery.

Materials.

Transport.

Depot Expenses.

General Establishment Expenses.

Loan Charges.

Capital Expenditure out of Revenue.

### INTERNAL AUDIT

A system of internal audit, whereby all the financial work of this nature may be concentrated under one department of the local authority, is an indispensable necessity of modern municipal organization. Such an audit is in addition to and not in substitution for the statutory audit described in the preceding pages. It may be conducted by a firm of professional accountants or by an internal audit staff of the local authority. The keeping of diagrammatic charts of income and expenditure, the regular compilation and comparison of statistics, the introduction of audit programmes and audit notebooks is of material value in systematizing the audit work. The checking of wages, trading revenues, stocks of materials, plant, equipment, etc., and other matters of a routine character is essential to a system of internal audit. The keeping of stores and cost accounts and loose plant and tool registers is a necessary part of the machinery for preventing fraud.

### SCOTLAND

In Scotland the Auditor of the Burgh Accounts is invariably a qualified professional accountant, over whom the local authority has no control. This enables him to act in an independent manner and to submit an unbiased report. The matter is dealt with in the chapter on Scottish Local Government Finance (Chapter XXXII).

## SECTION VIII SPECIAL LEGISLATION

### CHAPTER XXX

#### LONDON

THE powers and duties of the London local governing bodies are distributed in a manner peculiar to London. For various reasons the Metropolis has been singled out for special legislation. These reasons are principally historical, for in the Metropolis vested interests are stronger and resist reform longer. The Royal Commission on Municipal Corporations, 1835, did not include London in its first report, but issued in 1837 a special report dealing with the City. The force of reform had weakened by this time, and little or nothing was done until the Royal Commission on the Corporation of London reported in 1854. This resulted in the passing of the Metropolis Management Act, 1855. Prior to the passing of this Act, the administration of the metropolitan area, outside the City of London, was in the hands of some three hundred bodies, mostly vestries, deriving their powers from some 250 local Acts of Parliament as well as from general Acts. The districts, for the most part, were quite independent of each other, and no general system of administration was followed. In substitution for this state of chaos, the Metropolis was divided into 99 parishes. A Vestry was established in each of the twenty-three largest parishes; fifty-nine smaller parishes were grouped into fifteen districts under a District Board; there were eight extra-parochial places, mainly the Inns of Court. The Vestries and District Boards were represented on the Metropolitan Board of Works which was appointed the central authority to exercise jurisdiction over matters which concerned London as a whole. The composition of these bodies has been changed by subsequent legislation.

The principal Metropolitan local government authorities now are—

1. The London County Council.
2. The City Corporation.
3. The 28 Metropolitan Borough Councils.
4. The 29 Assessment Committees.
5. The Metropolitan Water Board.
6. The Thames Conservancy Board.

7. The Lee Conservancy Board.
8. The Port of London Authority.
9. The London and Home Counties Traffic Advisory Committee.
10. The London and Home Counties Joint Electricity Authority.
11. The London Passenger Transport Board.

The Thames Conservancy is entirely and the Lee Conservancy partly extra-London. The Port of London Authority, the Traffic Committee, the Electricity Authority, and the Transport Board are London and extra-London, i.e. Greater London.

The Metropolitan Asylums Board, the Metropolitan Boards of Guardians, and the Central (Unemployed) Body were abolished as from the 1st April, 1930, in accordance with the provision of the Local Government Act, 1929.

Although there are so many local authorities, only one General Rate is levied by each Metropolitan Borough Council. This General Rate covers the expenditure of the Metropolitan Borough Council itself and the amounts required by the several precepting authorities. In the City of London two rates are made—the Poor Rate (which includes the County Rate) and the General Rate. The two rates are levied on one demand note.

### LONDON GOVERNMENT ACT, 1939

This Act does generally for London what the Local Government Act, 1933, did for the rest of the country, that is to say; it consolidates the law relating to the constitution and administrative functions of the London County Council and the Metropolitan Borough Councils. The provisions as to the constitution of these councils include the appointment of committees; the procedure governing elections; the financial machinery, comprising the issue of county precepts, the levy of borough rates, the establishment of the county fund and the borough general rate funds; and the borrowing powers of the borough councils.

The borrowing powers of the London County Council have not been included in this Act. They are contained in the London County Council (Finance Consolidation) Act, 1912, as amended subsequently.

The provisions as to administrative functions include the powers of acquiring land by agreement or compulsorily, the procedure for making by-laws and provisional orders, the promotion of and opposition to Bill in Parliament, the conduct of legal proceedings, and service of notices, the erection of offices and the appointment of officers.

### THE LONDON COUNTY COUNCIL

**Constitution.** The London County Council, which replaced the Metropolitan Board of Works, was established by the Local

Government Act, 1888, which also created the provincial County Councils. The County Council consists of 124 elected representatives. Sixty of the London Parliamentary divisions return two members each; and one division (the City of London) four members. There are also twenty aldermen.

**Chairman.** The council elects annually a chairman, a vice-chairman, and a deputy-chairman. In June, 1935, it was announced that the King had conferred on the Chairman and his successors in office for the time being the right to the style "the Right Honourable" prefixed to his official title.

**Election and Term of Office.** Each councillor is elected for three years by the Local Government electors. The aldermen are elected by the councillors for six years, one half retiring every three years. They need not be councillors but must be qualified for election as such.

**Meetings.** The meetings of the whole council are usually held every week.

**Committees.** The County Council may appoint a Committee for any such general or special purposes as in the opinion of the Council would be better regulated and managed by means of a Committee. Any Committee so appointed may include persons who are not members of the Council, not exceeding one-third of the total number of the Committee. (London County Council (General Powers) Act, 1934, Sect. 19.)

**Standing Orders.** The London County Council (General Powers) Act, 1934, provides that the County Council may make, vary and revoke standing orders respecting the proceedings at their meetings, the matters to be referred and the functions to be delegated by the Council to any committee and the proceedings, etc. (Sect. 29.)

**Powers and Duties.** These differ widely from those of other County Councils as described below.

In the City of London the following duties are performed by the City Corporation (in the remainder of the Administrative County of London the County Council is the sole authority): examination of gas, provision of mental hospitals, maintenance of bridges and mortuaries, enforcement of the Shop Hours Act, enforcement of the Petroleum and Explosives Acts, inspection of weights and measures, and appointment of Coroner.

**Public Health.** The public health functions of the Council are to a large extent supervisory and co-ordinating, but it is the central hospital authority for the county. It is the sole authority in the following matters: main sewers and sewage disposal, fire brigade, street improvements (Metropolitan in character), tunnels and ferries, bridges over the Thames (except those of the City Corporation), and minor county bridges. It is responsible for

the maintenance of the walls of the Thames embankments. It sanctions the naming of streets and the numbering of houses. The administration of the building laws and the Contagious Diseases of Animals Acts is also in its hands. Its Medical Officer reports on the health of the whole county, dealing with vital statistics, returns of infectious diseases, and the reports of the Borough Medical Officers.

**Housing.** The Housing Acts are administered by the County Council and the Metropolitan Borough Councils. The County Council undertakes the clearance of large slum areas, i.e. those which are general in character and not particular to any one borough.<sup>1</sup>

**Planning.** The County Council is the local authority under the Town and Country Planning Act, 1932, for the County of London outside the City of London, but is required to consult the Metropolitan Borough Councils in connection with the preparation of Schemes and in regard to certain classes of Interim Development. It is responsible for the maintenance of the larger parks and open spaces in the county (other than the Royal Parks). The Act of 1932, Sect. 48, which deals with the appointment of committees for the purposes of the Act was repealed so far as it relates to the London County Council by Sect. 76 and the Schedule to the London County Council (General Powers) Act, 1934.

**Public Assistance.** The County Council is also the public assistance authority for the administrative county. This service is referred to in greater detail below and in *Public Assistance and Unemployment Assistance* (Pitman).

**Licensing.** Under the Theatres Act, 1843, the duty of licensing, for the public performance of stage plays, theatres (not being patent theatres) within the "Parliamentary boundaries of the Cities of London and Westminster and of the Boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth and Southwark" as existing at the time of the passing of the Act is discharged by the Lord Chamberlain. Elsewhere within the administrative county the duty rests upon the County Council. The latter authority also licenses premises under the Cinematograph Act, 1909 (except as regards premises licensed by the Lord Chamberlain for the performance of stage plays, in which cases the licences are issued by His Lordship), and for public music and dancing. The council obtained in its General Powers Act, 1930, power to license premises for public boxing. The council is the authority under the Sunday Entertainments Act, 1932.

<sup>1</sup> The division of powers and duties is detailed in *The Law of Housing and Planning* (Pitman).



**Miscellaneous.** The County Council also enforces the provisions of the Children and Young Persons Act, 1933, the Motor Car Acts, Muzzling Orders, Rabies Act, Overhead Wires Act, Coal and Bread Act, Child Life Protection Act, and Midwives Acts.

**Education.** It administers the whole of the education service for the Administrative County of London in accordance with the Education Act, 1944, described in the chapter on Education.

**By-laws.** The London County Council (General Powers) Act, 1934, empowers the County Council as respects the County of London, and a Metropolitan Borough Council as respects their borough, to make by-laws for the good rule and government of the county or borough, and for the prevention and suppression of nuisances therein. By-laws made by a borough council must not be inconsistent with by-laws made by the County Council and in force in any part of the borough. (Sect. 38.)

**Representation.** The London County Council appoints representatives on a number of other bodies, including the Metropolitan Water Board, the Port of London Authority, the London and Home Counties Joint Electricity Authority, and the London and Home Counties Traffic Advisory Committee.

**Approved Schools.** The local authorities responsible for approved (formerly reformatory and industrial) schools in the Metropolitan area are—

1. **Reformatory (now Approved) Schools.** The Common Council of the City of London (for youthful offenders committed by a petty sessional Court acting in or for the City), and the London County Council (for all other youthful offenders who have been committed and who reside in the County of London). The County Council repays to the Common Council in respect of reformatory cases maintained by the City a sum equal to the average cost of maintaining those for whom the Council is responsible.

2. **Industrial (now Approved) Schools.** The County Council is responsible as the local education authority.

**The Regulation of Traffic** is a police matter, subject to the wide powers of the Minister of Transport, under the London Traffic Act, 1924. The Minister is assisted by a committee called the London and Home Counties Traffic Advisory Committee, to which body the London County Council appoints six ordinary members. The alterations made by the Road Traffic Act, 1930, are dealt with in Chapter XX.

**Relations with the Metropolitan Borough Councils.** Certain by-laws made by the London County Council and approved by the Ministry of Health or other appropriate Government Department are administered by the Metropolitan Borough Councils. The Council hears appeals from orders of Metropolitan Borough

Councils under the Metropolis Management Acts and the Public Health (London) Act, 1891, and under Sect. 100 of the Act of 1891 it can take action in place of a sanitary authority in default with respect to the removal of nuisances, the institution of proceedings, or the enforcement of by-laws. The County Council may also report defaulting Metropolitan Borough Councils to the Ministry of Health. The sanction of the County Council is required for the raising of loans required by Metropolitan Borough Councils in respect of certain services as mentioned on page 823.

**Rate Relief.** The Rating and Valuation (Apportionment) Act, 1928, which makes provision, with a view to the grant of relief from rates in respect of certain classes of hereditaments, for the distinction in valuation lists of the classes of hereditaments to be affected, and the apportionment in valuation lists of the net annual values of such hereditaments according to the extent of the user thereof for various purposes, also applies to London. In this connection certain provisions of the Rating and Valuation Act, 1925, are applied, with modifications to meet the special circumstances of London.

**London Squares.** In July, 1927, a Royal Commission on London Squares was appointed under the chairmanship of the Marquess of Londonderry. The terms of reference were, "To inquire and report on the squares and similar open spaces existing in the area of the Administrative County of London, with special reference to the conditions on which they are held and used and the desirability of their preservation as open spaces, and to recommend whether any or all of them should be permanently safeguarded against any use detrimental to their character as open spaces, and, if so, by what means and on what terms and conditions." The Commission reported in September, 1928, in favour of the retention of the whole of the squares and similar open spaces with five exceptions. The enclosures should be rest, or recreation. There are elaborate recommendations regarding the payment or non-payment of compensation for restrictions.

The London Squares Preservation Act, 1931, promoted by the London County Council, was passed with the object of giving effect to the principal recommendations of the Royal Commission.

**London Building Acts (Amendment) Act, 1939.** The London Building Act, 1930, was a purely consolidating measure, that is, it included in one Act a series of provisions appearing in a number of Acts passed in 1894 and onwards without introducing amendments designed to bring the provisions up to date. The main object of the Act of 1939 is to amend the Act of 1930, in order to bring it into closer conformity with modern requirements

and general building practice. As a result, nearly the whole of the Act of 1930 has been repealed and re-enacted, leaving only in operation the parts of that Act which have relation to town planning considerations and the parts which do not at present call for amendment. The former parts are concerned with the formation and widening of streets, the fixing of lines of building frontage, the provision of open spaces about buildings, and the limitation of height of buildings, and have been left over for review when the County Town Planning Schemes are in operation.

The latter parts relate to the control of buildings used for dangerous and noxious businesses and the erection of dwelling-houses on low-lying land.

The Act of 1939 also extends the matters in respect of which by-laws may be made by the London County Council under the London Building Act (Amendment Act), 1935, and, in particular, includes such matters as the fire grading of buildings and building materials and the construction of lifts.

**Building By-laws.** No building except a church or chapel may be erected to a greater height than 80 ft. (exclusive of two storeys in the roof and ornamental features) without consent of the Council. An Advisory Committee has proposed a new by-law of "twice the width of the street from the wall of the building on the opposite side, or 100 ft., whichever is the least."

**The Transfer of Powers (London) Orders, 1933 and 1934,** made by the Minister of Health under Part IV of the Local Government Act, 1929, transferred to the councils of the Metropolitan Boroughs and to the Common Council of the City of London certain functions as to matters mentioned in the First and Second Schedules to the Order. (See also page 823.)

**Officers.** The principal officers are similar to those appointed by the provincial County Councils, together with the comptroller, architect, valuer, solicitor, parliamentary officer, chief officer of public control department, chief officer of supplies, chief officer of parks department, chief officer of public assistance, and chief officer of mental hospitals department. The offices of clerk of the Council and clerk of the Peace are separately filled.

**Finance.** The London County Council is required to appoint a Finance Committee, consisting of members of the Council, for regulating and controlling the finance of the County and may delegate to the Committee with or without restrictions or conditions, any functions exercisable by the Council. (London County Council (General Powers) Act, 1934 (Sect. 20), which reproduces, substantially, Sect. 80 (3) of the Local Government Act, 1888.) The sources of income are the tolls, fees, fines, rents, interest on loans to Metropolitan Borough Councils, profits on

municipal enterprises, and contributions from the Imperial Exchequer. The deficiency is made good by rates obtained by the issue of precepts upon the City of London Corporation and the Metropolitan Borough Councils. The London County Council (Finance Consolidation) Act, 1912, and the Standing Orders of the House of Commons regulate the proceedings as to capital expenditure.

## PUBLIC ASSISTANCE

Special schemes for the reform of Public Assistance in London were contained in the reports of the Royal Commission of 1909 and the Maclean Committee (1918). Proposals on the subject were issued by the Government in December, 1925, and these proposals, amended in certain respects, were included in the Local Government Act, 1929.

**Royal Commission, 1909.** The Majority Report recommended that their scheme of reform should be applied to London with the following modifications—

(a) The area for the new public assistance authority should be that of the London County Council. The areas of the public assistance committees should generally be the areas of the existing unions, though in certain cases some readjustment would be necessary.

(b) The public assistance authority for London should be a statutory committee of the London County Council, with statutory duties. One-half of the members of the statutory committee should be nominated by the London County Council, either from their own number or from outside; one-quarter should be appointed by the London County Council from outside their own number, and should consist of persons of skill and experience in the administration of public assistance or other cognate work; and one-quarter should be nominated by the Local Government Board—now the Ministry of Health—so as to secure representation on the committee of such interests as the medical and legal professions, employers and working men, hospital administration, charitable organizations, etc.

(c) The London public assistance committees should be constituted as in the provinces, except that nominees of the Metropolitan Borough Councils should be substituted for nominees of Urban and Rural District Councils.

(d) Poor Law expenditure should be a uniform charge over the whole area according to rateable value.

**Maclean Committee, 1918.** The Local Government Committee appointed by the Ministry of Reconstruction and commonly referred to as the Maclean Committee reported in January, 1918.

The committee gave many reasons why reform was necessary. The first was that it was possible to reduce the overlapping and waste which was inseparable from the then existing system; and, second, that it would enable certain abuses which unfortunately showed signs of spreading in certain parts of the country to be dealt with. Overlapping and waste existed, and the Maclean Report set forth that under the present system there undoubtedly existed at that time a number of bodies giving various forms of public assistance out of rates and taxes with very inexact delimitations of the persons eligible to receive that relief. In that Report there was the significant statement that there were, for instance, seven public authorities giving money in the home, leaving out the exceptional cases of money payments by the education and health authorities; at least six were providing various forms of medical treatment, and three educational training of one sort or another. The able-bodied unemployed might be subsidized by five of them. With few exceptions there was no common system of registration of cases, so that even the names of persons receiving assistance from one or more bodies might be unknown to some other body charged with considering the same.

The Maclean proposals involved the abolition of the Boards of Guardians and the transference of their duties to larger authorities.

**Special London Features.** The case of London had special features of its own. There were 25 Boards of Guardians in London, four Joint Boards of Managers of School Districts the Central Unemployed Body, 29 Distress Committees, and the large central authority, the Metropolitan Asylums Board.

The Metropolitan Asylums Board was originally established for defined Poor Law purposes of an institutional character, but developed into a central health authority. It was the central hospital authority for London for the infectious sick, undertaking in that connection duties performed outside London by municipal authorities. Although technically a Poor Law authority the greater part of its work was, however, outside the scope of the Poor Law. In addition to its 14 large fever hospitals, it maintained two institutions for venereal disease, seven for tuberculosis, five large mental hospitals, two training colonies for feeble-minded, one colony for sane epileptics, and a training ship (*Exmouth*) for boys. Provision was also made in five institutions for sick children (where the education of the patients was continued, as it also was in the sanatoria). The whole of the Metropolitan casual wards which were administered, prior to 1st April, 1912, by the separate Boards of Guardians were,

until 1st April, 1930, maintained by the Board. The Board provided an extensive motor ambulance service with three wharves and five steamboats, and a bacteriological laboratory and research establishment. This Board was, therefore, by far the largest and most important institutional authority in the world, having beds for 25,000 patients.

The London Guardians controlled 140 institutions, including 30 hospitals and infirmaries, 32 workhouses, and many homes and schools. These institutions had accommodation for 100,000 inmates, but there was no interchange among them, no central clearing house, with the result that a workhouse or other institution on one side of the street might be overcrowded, while a building nearby belonging to another body might be half empty.

The members of the Metropolitan Asylums Board were nominated by the Boards of Guardians and the Ministry of Health. The Board overlapped with the County Council, the local health authorities, and with the Guardians who appointed it. The public took little interest in the work of the Board, although it discharged important functions and had an annual expenditure of over two millions.

The witnesses on behalf of the Board who gave evidence before the Royal Commission on London Government<sup>1</sup> admitted that anomalies had grown up and that redundant services existed and suggested as a solution that the Board should take over the London County Council asylums, and such other kindred institutions as should fall to a central authority. Such an extension of the powers of an indirectly elected authority is contrary to accepted principles and not probable in these days.

The main objection to the Board, apart that its existence prevented unification, was that it was indirectly elected. There was no charge against it in regard to the way it performed its duty. The Board's administration was efficient, and it was as economical as it was possible under the then existing conditions. It was served by a capable staff, who were continued under a reformed system, and have, in fact, greater scope for their energies. The London County Council appoints the nursing, domestic, and engineering staffs of the British Post Graduate Medical School.

**Government Scheme, 1925.** In December, 1925, a scheme for the Reform of the Poor Law was issued by the Government. This scheme involved the abolition of the Boards of Guardians, the Metropolitan Asylums Board, and the Central (Unemployed) Body for London. The London County Council in October, 1926, adopted a resolution in regard to this scheme authorizing its

<sup>1</sup> See page 815.

Special Committee on the Poor Law to enter into negotiations with the Minister of Health, the Common Council of the City of London, and the Metropolitan Borough Councils with a view to amendment of the Minister's scheme. The negotiations were entered into and the decision of the Minister of Health was shown in the Local Government Act, 1929.

### GOVERNMENT PROPOSALS FOR REFORM OF LOCAL GOVERNMENT, 1928.

Certain modifications of the financial scheme were required to meet the special circumstances of London. Poor Law was transferred to the County Council, but not highways. The Classification Grants for Class I and Class II roads were, however, absorbed in the new Exchequer Grant.

The grant was allotted, during the first two grant periods, to the administrative county, equivalent to 75 per cent of the loss of rates and grants in the standard year of the County Council, the Common Council of the City of London, and the Metropolitan Borough Councils, together with the appropriate formula grant on the weighted population of the county.

After the payment to the Common Council of the City of London and each Metropolitan Borough Council of 75 per cent of its proportion of loss of rates and grants in the standard year, together with one-third of the formula grant appropriate to its weighted population without the loading for unemployment, the balance will be the grant payable to the County Council.

If the total grant payable to the County Council, the Common Council of the City of London, and the Metropolitan Borough Councils does not exceed the aggregate loss of rates and grants in the standard year by a sum equivalent to 1s. per head of actual population, the grant to the County Council will be increased by such sums as will bring the net aggregate gain up to the equivalent of 1s. per head of population.

The local government changes involved considerable alterations in the incidence of rates in London, where various special circumstances exist.

The reform contained in the Local Government Act, 1929, and outlined in the chapter on Public Assistance, applies to London subject to certain modifications resulting from the different arrangements in London for education and maternity and child welfare. As a natural consequence of the transfer of Poor Law functions, the Metropolitan Asylums Board ceased to exist, and the London County Council became responsible for the services formerly maintained by the Board. The Metropolitan Common



Poor Fund also ceased to exist, as the cost of the relief of the poor is spread over the County through the County Rate.

**Local Government Act, 1929.** Under the provisions of Sect. 4 of the Local Government Act, 1929, the London County Council was required to prepare, and within six months of the commencement of the Act (that is to say, by 27th September, 1929) to submit to the Minister of Health an administrative scheme of the arrangements proposed to be made for discharging the functions transferred to the Council under Part I (Poor Law) of the Act.

The scheme could not become effective unless and until it was approved by the Minister, who, after considering any representations by any local authorities and other interested parties submitted to him within four weeks after the publication of the notice stating that the scheme had been so submitted, and after consultation (if and so far as the scheme related to education) with the Board of Education, might approve the scheme with or without modifications. Any scheme made may be amended by a scheme similarly made and approved.

Under the Act the London County Council, in common with other local authorities concerned, was required to appoint a Public Assistance Committee, and it was free to provide in its administrative scheme for the reference or delegation to any committee of the council (including the Public Assistance Committee) of any of the functions transferred under the Act, except the power of raising a rate or borrowing money.

AN ADMINISTRATIVE SCHEME was adopted by the council on the 16th July, 1929. Part I thereof contains definitions. Part II is a Declaration as to the provision of certain assistance otherwise than by way of relief. Reference of transferred functions to committees is provided by Part III. The constitution and functions of the "Public Assistance Committee" is contained in Part IV. In Part V provision is made for the division of the County into areas for the administration of public assistance, the constitution of local committees and their functions, etc. The council's existing Public Health Committee was reconstituted and designated "The Central Public Health Committee" (Part VI). Additional duties were placed on other Standing Committees. (See Parts VII, VIII, IX, X, and XI.) Part XII relates to the delegation and application of the Council's Standing Orders. Contained in the Schedule to the Scheme are particulars of the ten areas into which the county has been divided for administrative purposes. The Scheme has since been amended in certain respects and adjustments made in the administrative machinery. In July, 1935, arrangements for the reorganization of public assistance in London came into operation. The functions



of district sub-committees were transferred to adjudicating officers, each with an assistant.

**London Equalization Funds.** London possessed two equalization funds which were unique in English Local Taxation, viz.: the Metropolitan Common Poor Fund, established in 1867, and operated by the Ministry of Health, and the Equalization Fund, established under the London (Equalization of Rates) Act, 1894, and administered by the London County Council. These were based upon the calculation of gross grants due to, and of gross contributions due from, each district, the difference only being paid in the form of a net grant or levied in the form of a net charge, as the case of each district might require. Both funds ceased to operate as from 1st April, 1930, consequent upon the Local Government Act, 1929. (Sect. 98 (4).)

#### PAYMENTS OUT OF THE EXCHEQUER CONTRIBUTION ACCOUNT AND OUT OF THE COUNTY RATE

The payments made by the London County Council out of the Exchequer Contribution Account cover half the salaries of Medical Officers of Health and sanitary inspectors appointed by the Borough Councils. The highest equivalent rate, however, is only about  $\frac{1}{2}$ d. in the £, so that these payments do not have any material effect on the distribution of the rate burden. In addition, grants are now received by the Borough Councils from the Exchequer and from the County Council in respect of the dispensary treatment of tuberculosis, half the cost, which would otherwise fall on local rates, being paid by the former, and one-fourth by the latter. These grants also, which were instituted in 1912 and 1914, have no material effect on the total burden of the rates.

#### THE CITY CORPORATION

The City of London is an area of about a square mile in the heart of the Metropolis divided into 26 wards.

**Constitution.** The City of London is under the control of the Court of Aldermen, the Court of Common Council, and the Court of Common Hall.

The Court of Aldermen consists of the Lord Mayor and the aldermen, who are *ex-officio* Justices of the Peace. It is the only surviving example in England of a municipal second chamber. As mentioned below, it makes the final selection for the office of Lord Mayor. The Court of Aldermen licenses brokers and elects the Recorder.

The Court of Common Council is the main legislative and executive body. It consists of the Lord Mayor, 26 aldermen, and

206 common councillors. It is not, like provincial Town and County Councils, merely an executive body, but it is also a legislative assembly, and is able to re-model its own constitution. For some duties it is still the sole Metropolitan authority.

**Election and Term of Office.** THE COMMONERS who are members of the Common Council are elected annually on the 21st December in different proportions in the 26 wards, by the City electors, being persons who have a property qualification in the City.

THE ALDERMEN are elected when vacancies occur in the various wards, and hold office for life. One is elected for each of 24 of the wards. Two wards elect one between them, and the remaining alderman sits for the nominal ward of Bridge-Without.

THE LORD MAYOR is chosen annually on the 29th September by the Court of Aldermen from two aldermen nominated by the Liverymen in the Court of Common Hall. He attains office only by a series of steps, each one of which is essential. He must first of all be elected as an alderman by the voters of one of the 26 wards of the City. He must then be elected by the Court of Common Hall to fill the office of Sheriff. Only then is he qualified to offer himself for the highest dignity to the Livery, who have the right of choosing two qualified aldermen.

THE SHERIFFS, two in number, are elected by the Court of Common Hall on Midsummer Day, and hold office for one year.

**Meetings.** The meetings of the Common Council are generally held fortnightly, except during August and part of September, when the Court is in recess.

**Committees.** There are a number of Standing Committees which usually meet fortnightly or monthly, each dealing with business of a particular nature, such as City lands, coal and corn, improvements, streets, sanitation, markets, libraries, schools, accounts, law and city courts, mental hospitals, police, etc.

**Powers and Duties.** In addition to exercising in the City of London the general powers and duties administered and performed by Metropolitan Borough Councils, the City Corporation is the sole port health authority for the Port of London which extends from Teddington to Sheppey, including part of the Medway. The Corporation has certain duties which in the rest of the county devolve on the London County Council, e.g. Mental Treatment, Child Life Protection, Diseases of Animals, the Shops Acts, and ambulance service. It is the local authority under the Town and Country Planning Act, 1932. It has jurisdiction over all markets within 7 miles of its boundary. It maintains the Mayor's and City of London Court for civil purposes for which the Court elects a Registrar. It also maintains a separate police force. Criminal jurisdiction is administered in

its own Police Courts, held daily at the Mansion House and the Guildhall, presided over by the Lord Mayor and aldermen sitting in turn. It maintains the City bridges, West Ham Park, Epping Forest, and other open spaces outside the city boundary.

It administers the extensive trust funds of the City. For educational purposes the City Corporation ranks as a Metropolitan Borough Council. The City Coroner has the distinction of holding Fire Inquests.

**Officers.** The principal officers are the town clerk, chamberlain, recorder, common serjeant, judges of the City of London Court, secondary, comptroller, remembrancer, solicitor, surveyor, engineer, medical officer, Port of London medical officer, coroner, librarian, director of art gallery, and commissioners of city police.

**Finance.** The sources of income are the City rates, tolls, fines, rents, contributions from the Imperial Exchequer, etc. The City does not contribute to the Special County Rate levied by the London County Council. Accounts date from 1633. Those for the first 151 years are in manuscript, but the others are in print. Earlier accounts are supposed to have been destroyed in the Great Fire. A large portion of the expenses are met out of the "City's Cash," which is derived from the private estates of the Corporation.

**Liverymen.** Liverymen are members of the City Livery Companies, which are the survivors of the ancient guilds or associations of craftsmen, such as the Ironmongers, Fishmongers, Goldsmiths, Stationers, Merchant Taylors, Apothecaries, etc. The governing body of the company is the Master, Wardens, and a Court of Assistants. The Master and Wardens are elected each year, but vacancies in the Court are filled by co-optation and appointments are made for life. Membership is of three classes: ordinary freemen, liverymen, i.e. men who have paid for the ancient right to wear the "livery" of the old Gild, and members of the Court. Any freeman of a Livery Company has the right to claim the freedom of the City, and those who have done so constitute the Court of Common Hall.

The Court of Common Hall is an assembly of the Lord Mayor, aldermen, sheriffs, and all the "liverymen." It nominates on Michaelmas Day each year two aldermen for the office of Lord Mayor, and these are submitted to the Court of Aldermen for final selection. It also elects the Sheriffs, the Chamberlain, and other corporate officers.

**Central Criminal Court.** In Greater London the place of the Assizes is taken as regards the greater part of the area by the Central Criminal Court. The Court house was provided and is maintained by the City Corporation, which also pays the salaries

of the judges other than the judges of the High Court. The London County Council pays seven-eighths of certain establishment expenses of the Court, the remainder being borne proportionately by the other County Councils within or partly within the Central Criminal Court District.

### THE METROPOLITAN BOROUGH COUNCILS

The Metropolitan Borough Councils were constituted by the London Government Act, 1899, as the result of a Royal Commission which reported in 1895. They are 28 in number, and are styled as follows: Battersea, Bermondsey, Bethnal Green, Camberwell, Chelsea, Deptford, Finsbury, Fulham, Greenwich, Hackney, Hammersmith, Hampstead, Holborn, Islington, Royal Borough of Kensington, Lambeth, Lewisham, Paddington, Poplar, St. Marylebone, St. Pancras, Shoreditch, Southwark, Stepney, Stoke Newington, Wandsworth, City of Westminster, and Woolwich. These 28 Borough Councils have taken the place of 127 local authorities, made up of 73 Vestries elected under the Metropolis Management Act, 1855, 12 District Boards, 1 Local Board of Health, 12 Burial Boards, 19 Boards of Library Commissioners, and 10 Boards of Baths and Wash-houses Commissioners.

Other boroughs, such as Hornsey and West Ham, which are within the area commonly called "Greater London," but which are outside the Administrative County of London, are not Metropolitan Boroughs, and do not come under the control of the London County Council.

**Constitution.** The councils of the Metropolitan Boroughs consist of a mayor, aldermen, and councillors. The Metropolitan Borough Councils are incorporated. In the provinces the inhabitants of the Borough are incorporated.

**THE COUNCILLORS.** Under the Act of 1899 the number of the councillors in the different boroughs varied from 30 to 60, according to population. The Borough Councillors (Alteration of Number) Act, 1925, enables the number of borough councillors to be altered by an Order of the Secretary of State under the London Government Act, 1899, Sect. 26. The councillors are elected triennially in wards by the local government electors, and all retire at the same time.

**THE ALDERMEN** number one-sixth the number of councillors. They are elected by the councillors for six years from among the councillors or from among persons qualified to be councillors (Municipal Corporations Act, 1882, Sect. 14). No alderman can vote as such in the election of aldermen. One-half retire triennially.

THE MAYOR must be elected from among the aldermen or councillors or from among persons qualified to be aldermen or councillors of the borough.

**Meetings.** The councils usually meet once a month, as in the case of the provincial Borough Councils.

**Committees.** A Metropolitan Borough Council may appoint a committee consisting of members of the Council for any such general or special purposes as in the opinion of the Council would be better regulated or managed by means of a committee. (London County Council (General Powers) Act, 1934, Sect. 27.)

**Travelling Expenses.** A borough council may defray any reasonable expenses incurred by the council in conveying any members of the council or a committee for the purpose of enabling them to carry out any inspection necessary for the discharge of their functions. (London County Council (General Powers) Act, 1934, Sect. 62.)

**Powers and Duties.** Although many important duties are performed by the London County Council, the Metropolitan Borough Councils have considerable local powers and duties. There have been transferred to them the powers, duties, property, and liabilities (except those relating to church affairs) of the old Vestries and District Boards. In addition, the Metropolitan Borough Councils were granted in 1899 a number of new powers, the great majority of which had previously been exercised by the London County Council.

They are the local health and sanitary authorities under the Public Health (London) Act, 1936. Their duties under this Act make them responsible for the inspection of their districts with a view to the detection of nuisances and the enforcement of the various provisions of the Acts relating to public health and local government so as to secure the proper sanitary condition of all premises. They are responsible for local sewerage and drainage (Metropolis Management Acts), sanitation of premises (including factories and bakehouses), and prevention of overcrowding; the administration of the Sale of Food and Drugs Acts; inspection of milk; provision of tuberculosis dispensaries; the enforcement of various by-laws. They have powers and/or duties under the Housing Acts; adoptive Acts such as Burial Acts; the Notification of Births Acts and the Maternity and Child Welfare Act; the maintenance, paving, cleansing, watering, and scavenging of all streets. The removal of refuse, the abatement of nuisances, the enforcement of provisions regarding infectious diseases, the registration of dairies, the inspection of cowsheds, slaughter-houses, and canal boats, and

the provision of mortuaries are also undertaken by the Metropolitan Borough Councils.

The Metropolitan Borough Councils have power to provide open spaces, public libraries, and public lighting, and have control over certain markets. They prepare the Valuation Lists for the assessment of rates, as described below. They are also responsible for the collection of the rates. The preparation of the Register of Electors is a statutory duty of the Town Clerk. Control over the breaking up of streets is now under the Minister of Transport in accordance with the London Traffic Act, 1924.

Under the Local Government Act, 1929, additional important duties devolve upon Metropolitan Borough Councils, including the functions of boards of guardians under the Registration Acts. (Sect. 27.)

Under the Transfer of Powers (London) Orders, 1933 and 1934, the under-mentioned powers and duties, *inter alia*, were transferred from the County Council to the Metropolitan Borough Councils—Prescription of building lines under Sect. 5 of the Roads Improvement Act, 1925, in unclassified roads; enforcement of by-laws relating to seamen's lodging houses; maintenance, repair, cleansing, watering, and lighting of the Thames embankments (other than the embankment walls); registration, licensing, inspection, and regulation of common lodging houses; licensing of cowhouses, slaughterhouses, and knackers' yards; maintenance, etc., of certain recreation grounds, disused burial grounds, and open spaces.

**Officers.** The principal officers of a Metropolitan Borough are the town clerk, accountant, treasurer, surveyor, engineer, solicitor, medical officer of health, public analyst, one or more sanitary inspectors, and inspectors of workshops where women are employed, and librarian.

**Finance.** The London County Council (General Powers) Act, 1934, applies Sect. 20 of the Act to Metropolitan Borough Councils as to the appointment of Finance Committees. (Sect. 28.)

Apart from County Councils, the Metropolitan Borough Councils are the only local authorities required by statute to appoint a Finance Committee.

The sources of income are the fines, dues, rents, profits from municipal undertakings, and grants from the Imperial Exchequer. County grants (i.e. out of the County Rate) are made in respect of tuberculosis dispensary treatment and drowned bodies (see Burial of Drowned Persons Acts, 1808 and 1886). Any deficiency is provided by levying a General Rate.

Loans for baths and washhouses, public libraries, cemeteries, sanitary conveniences, maternity and child welfare and certain

other public health services, and for purposes authorized by the Local Authorities (Financial Provisions) Act, 1921, require the sanction of the Minister of Health. Loans in respect of electricity supply must be sanctioned by the Electricity Commissioners, while loans in respect of all other services require the sanction of the London County Council. There is a right of appeal to the Minister of Health against a decision of the county council.

**The General Rate.** The demand notes for rates must clearly state the several purposes for which they are made, and the approximate amount in the pound required for each purpose. The General Rate is assessed, made, and levied as if it were the Poor Rate, and all enactments applying or referring to the Poor Rate are to be construed as applying or referring to the General Rate. (London Government Act, 1899, Sect. 10 (2).)

**The Accounts** are made up annually and are audited by the District Auditors of the Ministry of Health.

**Metropolitan Boroughs Standing Joint Committee.** This Committee consists of representatives of the Common Council of the City of London and of certain of the Metropolitan Borough Councils. Unlike the Standing Joint Committees of the counties, the Metropolitan Boroughs Standing Joint Committee is a voluntary, not a statutory, body. It was formed in 1912 on the initiative of the Hammersmith Borough Council. It meets at least once a month under the chairmanship of one of its members, with the Town Clerk of one of the boroughs as honorary secretary. The objects of this Committee are—

(a) The protection and advancement of the powers, interests, rights and privileges of the Metropolitan Borough Councils.

(b) To discuss questions of London Government, and to advise and assist the said councils in the administration of their powers and duties.

(c) To watch over and protect the powers, interests, rights, and privileges of the said councils as they may be affected by legislation, or proposed legislation (public or private) or otherwise.

(d) To express the views of the said councils as a whole to the appropriate bodies or persons whenever deemed advisable.

(e) To pass resolutions for the information of the London County Council and the respective Borough Councils.

The proceedings throughout are quite voluntary, and some of the Borough Councils do not appoint representatives thereon.

**Public Health.** The Public Health (London) Act, 1936, was passed for the purpose of consolidating the public health law of London. The Act wholly repeals twelve Acts, and four other Acts except in so far as they apply to the City of London, and

partly repeals fifty-seven other Acts. The fourteen Parts of the Act are—

I. Local Administration: The Common Council of the City of London, Metropolitan Boroughs, Overseers of the Inner and Middle Temple, and London County Council are sanitary authorities. They are required to inspect their districts from time to time to see there are no nuisances calling for abatement; Medical Officers of Health and sanitary inspectors; Health visitors.

II. Sewerage and Drainage: General functions of borough councils in relation to sewerage and drainage; Several functions of county council in relation to sewerage; Drainage of premises; Construction of sewers and communications therewith; Protection of sewers and drains; Supplementary powers and miscellaneous provisions.

III. General Sanitation and Cleanliness: General provisions; Water supply; sanitary conveniences, etc.; Animals and birds; Verminous articles; Premises and persons; Factories and workshops and bakehouses; Underground rooms; Tents and vans; and Rag flock.

IV. Offensive Trades.

V. Smoke Consumption.

VI. Tenements and Lodging Houses: General provisions; Common lodging houses.

VII. Public Baths and Washhouses: Management and miscellaneous and supplementary provisions.

VIII. Food: General provisions; Milk; Horseflesh; Ice cream and preserved food; Shellfish.

IX. Prevention and Treatment of Disease: Notification of disease; Prevention of infectious diseases; Epidemic diseases; Treatment of tuberculosis; Removal of diseased or infirm persons to hospitals or institutions; Medical officers and health visitors.

X. Hospitals, Medical Services, Ambulances and Mortuaries.

XI. Registration of Nursing Homes.

XII. Maternity and Child Welfare.

XIII. Child Life Protection.

XIV. Miscellaneous and General: Incidental powers of sanitary authorities and port health authority; By-laws; Legal proceedings; Appeals; Financial provisions; Remedies in case of default by sanitary authorities; Miscellaneous and supplementary provisions.

## VALUATION FOR RATING PURPOSES

The Valuation (Metropolis) Act, 1869, was enacted for the purpose of securing uniformity as far so practicable in the assessment of all rateable hereditaments in the County of



London. In London such uniformity is highly important. It is important also as regards the more extended area served by the Metropolitan Water Board and the Metropolitan Police District. Apart from the question of assessment for the purpose of rating in London the gross valuation in the Valuation List was conclusive for the purpose of the assessment of income tax—Schedule A. This was peculiar to the Metropolis, as assessments for purposes of income tax outside London are revised in pursuance of the Finance Act, 1922, and generally accord with the actual existing rents paid. This provision was repealed by the Finance Act, 1930, as from 6th April, 1931.

It is most important in determining the gross value of any hereditament to pay due regard to the definition of gross value in Sect. 4 of the Act of 1869, which is "annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, the tithe commutation rent charge (if any) and if the landlord undertook to bear the cost of repairs and insurance, and the other payments (if any) necessary to maintain the hereditament in a state to command that rent."

Rateable value is defined as "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid."

These definitions must be applied in accordance with the terms of Sect. 52 of the Act, which enacts that the deductions to be made from the gross value in calculating the rateable value shall not exceed the amounts in the third Schedule to the Act.

As the result of a Conference of Metropolitan Assessment Committees held early in 1925, the Ministry of Health was urged to introduce legislation immediately to amend the third Schedule to the Valuation (Metropolis) Act, 1869.

The reasons for such proposals were given as follows—

That it has to be recognized that there has been an increase in rents of smaller dwelling-houses, which must affect their annual value, and which must to some extent be reflected in the rateable value; that it has also to be recognized that there has been a great increase in the cost of repairs, and that in consequence the rateable value is not increased in the same proportion as the increase of rent; that the highest rate of deduction under the present scale, namely, one-fourth, is not sufficient allowance to arrive at the rateable value in respect of the smallest properties, and similarly the rates of deduction in regard to properties of higher value are insufficient; that if gross values are to be raised, Classes 1 to 5 of the Third Schedule to the Valuation (Metropolis)

Act, 1869, and the maximum rates of deduction in relation thereto should be amended; and that the undermentioned scale should be substituted for that in the Third Schedule to the Act of 1869—

Class 1. Where the gross value does not exceed £40, 33½ per cent or one-third.

Class 2. Where the gross value exceeds £40 and does not exceed £80, 25 per cent, or one-fourth.

Class 3. Where the gross value exceeds £80, but does not exceed £150, 20 per cent, or one-fifth.

Class 4. Where the gross value exceeds £150, 16½ per cent, or one-sixth.

The Valuation (Metropolis) Amendment Act, 1925, was passed accordingly and embodied these recommendations.

The Rating and Valuation Act, 1928, affects not only the principal Act, that is, the Rating and Valuation Act, 1925, but also the Valuation (Metropolis) Act, 1869. Sect. 1 of the Act applies to London the provisions of Sect. 24 of the principal Act, which governs the rating of machinery and plant. This alteration first became effective in the supplemental valuation lists which came into operation on 6th April, 1929. Sect. 2, sub-sects. (1) and (2), substituted for the purposes of London lists which were to come into operation on 6th April, 1931, and the Rating and Valuation Act, 1932, extended these for the purpose of the subsequent lists, a higher table of statutable deductions from gross to net for houses and buildings, that is to say, for items 1 to 5 in the Third Schedule to the Act of 1869. These amendments in the London scale and an amendment by the Act in the scale under the Rating and Valuation Act have resulted as follows—

Houses and buildings up to £20 gross value—alike.

Houses and buildings over £20 gross value—Metropolitan scale higher.

Land with buildings—alike.

Land without buildings—alike.

Factories and Manufactories—the Metropolitan scale is retained, but under the Rating and Valuation Act there is no deduction, as net value is calculated direct without preliminary ascertainment of gross value.

## METROPOLITAN POLICE

Unlike the provincial County Councils, the London County Council has nothing to do with the control of police within its area. The City Police have jurisdiction within the area of the City of London. The Metropolitan Police Force, which is directly administered by Commissioners appointed by the Home Secretary,

controls an area defined by the Fourth Schedule to the Police Act, 1946, which includes the remainder of the Administrative County of London, together with the county boroughs of Croydon, East Ham, West Ham, and parts of the administrative counties of Essex, Herts, Kent, and Surrey.

The Metropolitan Police Act, 1933, followed the recommendations contained in a Report of Lord Trenchard, the Chief Commissioner. The Act is intitled "An Act to amend the enactments relating to the metropolitan police force in regard to the number of assistant commissioners of police, the age of compulsory retirement, membership of the Police Federation, and the appointment of constables for a fixed period of service; to adapt in the case of constables so appointed the enactments relating to police pensions and gratuities, National Health Insurance, and Widows', Orphans', and Old Age Contributory Pensions; and for purposes connected with the matters aforesaid."

### **METROPOLITAN WATER BOARD**

The Metropolitan Water Board is constituted under the provisions of the Metropolis Water Act, 1902.

The Board consists of 66 representatives nominated by the local authorities of the water area, namely, the London County Council, five other County Councils, the Common Council of the City of London, the Metropolitan Borough Councils, and the councils of the boroughs and urban districts served by the Board. The duties of the Board consist in administering the undertakings of the eight Metropolitan Water Companies which were expropriated under the terms of the Act.

It is responsible for the water supply for an area including the administrative County of London and about 500 square miles of the environs. It is the greatest single service authority in the world and supplies an area containing 7,500,000 persons.

The water charges are collected directly by the Board from the consumer, but any deficiency in the revenue of the Board is met by a Deficiency Rate, levied by precepts on the authorities directly represented on the Board. Funds for the performance of the duties may be borrowed with the consent of the Ministry of Health.

Owing to deficiency in the Water Fund due to the limitation on the Charge which the Board could levy, the Metropolitan Water Board (Charge) Act, 1921, empowered the Board to apportion their deficits among the Councils entitled to representation on the Board. This resulted in non-contributory areas receiving supplies considerably below cost price. A Departmental Committee reported against a rate charge for deficiencies on

these areas as only part of the areas received supplies. Subsequent legislation empowered the Board in lieu of the deficiency rate to make an additional charge of  $\frac{1}{2}$  per cent in respect of domestic charges and 1d. per 1,000 gallons in respect of meter supplies in these areas.

### THE PORT OF LONDON AUTHORITY

Until March, 1909, the London Docks, the first of which, the West India Dock, was opened in 1802, were the property of heavily capitalized private companies. The Port of London Act, 1908, created the Port of London Authority consisting of 29 members—10 appointed by the Admiralty, the Ministry of Transport, the City Corporation, the London County Council, and Trinity House, and 17 elected, with a Chairman and Vice-Chairman appointed by the Authority from within or without its own body. The seventeen elected members are allotted equally to representatives of "goods" and vessels, the seventeenth being filled by the candidate with the next highest number of votes, whichever of these classes he represents. Elected members are returned on a plural system, payers of dues having from one to fifty votes, according to the amount of dues paid, and wharfingers from one to ten votes, according to the rateable value of their premises, whilst owners of river craft have from one to ten votes according to the number of vessels they possess. The docks were taken over by the Authority, which also assumed for that part of the Thames below the landward limit at Teddington Lock all the rights, powers, and duties of the Thames Conservancy Board. The Authority also took over the functions of the Waterman's Company, which, until 1908, licensed all lightermen navigating the river.

### THE THAMES CONSERVANCY BOARD

The Thames Conservancy Board was created by Act of Parliament in 1894, but was re-constituted by the Port of London Act, 1908. A scheme for the reconstitution of the Board operated from April, 1931. The Board consists of 31 members, together with a maximum of three additional members appointed by the Minister of Agriculture to represent internal drainage boards in the catchment area. The members are appointed by certain Government Departments (including the Admiralty, Board of Trade, Trinity House) and local authorities. It is the responsible river and harbour authority, and is invested with powers for regulating navigation, order and fishing, the prevention of pollution, the registration of vessels, and for preserving the flow of the water in the River Thames. Its jurisdiction extends from

above the landward limit of Teddington Lock to the source of the river in Gloucestershire. No part of the area of jurisdiction is within the administrative County of London. The income of the Board is obtained from various tolls, fees, rents, licences, dues and payments from the water and canal companies.

### THE LEE CONSERVANCY BOARD

The Lee Conservancy Board consists of 15 members, 14 nominated by the local authorities concerned, and 1 by the barge-owners on the river. The River Lee is navigable for 29 miles, and the Metropolitan Water Board takes water from it. The Lee Conservancy Board is responsible for the control of the river and its tributaries and the prevention of pollution.

### ROYAL COMMISSION ON LONDON GOVERNMENT

In October, 1921, consequent upon representations by the London County Council, a Royal Commission, under the Chairmanship of Viscount Ullswater, was appointed, "To inquire and report what, if any, alterations are needed in the local government of the administrative County of London and the surrounding districts, with a view to securing greater efficiency and economy in the administration of local government services and to reduce inequalities which may exist in the distribution of local burdens as between different parts of the whole area."

The report of the majority of the commissioners was signed by the Chairman, Sir H. Monro, Sir Albert Grey, and Mr. E. R. Turton. Sir Albert Grey also presented a separate memorandum. A second report was submitted by Mr. E. H. Hiley and Mr. G. J. Talbot, K.C., and a third by Mr. Robert Donald and Mr. Stephen Walsh. The reports are summarized below—

#### (a) The Majority Report Recommendations—

1. Retention of existing system.
2. Establishment of Statutory Advisory Committee to advise Ministers on transport, town-planning, housing, and drainage, in London and within a radius of 25 miles.
3. Smaller local government units around London should unite with larger adjacent areas.
4. Establishment of an Equalization Fund from equalization rates calculated to produce £8,000,000 per annum.

#### (b) First Minority Report Recommendations—

1. London should be split up into a number of County Boroughs.
2. Administration of some services (for example, water supply, drainage, tramways) by a central authority.

## (c) Second Minority Report Recommendations—

1. New Central Authority for Greater London superseding all existing central bodies and enormously increasing the area of the existing central authority.

2. Equalization by—

(i) Central administration of chief services.

(ii) Equalization Fund.

3. Preservation of independence of local authorities.

4. Greater London should be regarded as one indivisible unit.

These recommendations have not been carried into effect, with the exception that a number of the smaller local authorities in extra-London have amalgamated, and the London and Home Counties Traffic Advisory Committee, which is dealt with below, has been created.

#### LONDON AND HOME COUNTIES TRAFFIC ADVISORY COMMITTEE

The London Traffic Act, 1924, made provision for the control and regulation of traffic in and near London and for purposes connected therewith. It is one of the results of the Royal Commission on London Government referred to above. The Majority Report recommended that a small Statutory Advisory Committee, to be called the London and Home Counties Committee, should be set up to advise the central authority *inter alia* on transport questions affecting London and a large surrounding area of 25 miles.

The Commissioners recommended that the total membership of this committee should not exceed 20 or 21, and that the members should represent local authorities and others concerned in the area of the London and Home Counties Electricity District, i.e. in London and within a radius of about 25 miles from London. The report suggested that the Advisory Committee should include members nominated by the London County Council; the City Corporation; the Metropolitan Borough Councils; the County Councils of Buckinghamshire, Essex, Hertfordshire, Kent, Middlesex, and Surrey; the County Borough Councils of Croydon, East Ham, and West Ham; the Commissioner of Police of the Metropolis; the Underground and other Railway Companies operating in London; the London General Omnibus Company; the users of horse and mechanical road traffic; and labour organizations operating within the area.

The London Traffic Act provided for the constitution of a London and Home Counties Traffic Advisory Committee to

assist the Minister of Transport in connection with the exercise and performance of his powers and duties within the area known as the London Traffic Area. The committee includes representatives of the London County Council, the Corporation of the City of London, the Metropolitan Borough Councils, and other local authorities within the area as recommended by the Royal Commission.

Part I of the Second Schedule to the Act enumerates the matters which may be referred to the Advisory Committee. These include "the co-ordination of all or any of the various forms of transport services and co-operation between the persons operating the same or different forms of transport service with a view to the combined operation of all means of transport in the London Traffic Area in the best interests of the public."

In July, 1927, the London Traffic Advisory Committee submitted to the Ministry of Transport a scheme for the co-ordination of passenger transport facilities in the London traffic area. The scheme provided for the consolidation of the passenger transport services of London with such public control as is required to protect the interests of the community in the matter of (a) the level of fares, (b) the adequacy of the services, (c) development of the limit of available resources. It further provided "for the setting up of a Common Fund and a Common Management to which the passenger transport undertakings operating wholly or partly within the London Traffic area, comprising underground and other local railways, tramways and omnibus undertakings, should be parties." The scheme included proposals for the constitution and distribution of the Common Fund and for the common management of the combined undertakings.

It was also proposed that in the event of the co-ordination scheme being brought into operation any local authority within the London traffic area should be empowered to apply to the Minister of Transport with respect to any of the following matters—

(a) The formation and revision, from time to time, of a general plan for the development and extension of travelling facilities; the means for carrying such plan into effect and the review of proposals put forward for extension and development with the object of ensuring that these conform with the general plan.

(b) The consideration of financial questions arising out of any development, extension or improvement, with the object of ensuring that all additional capital required for such purposes is secured under as advantageous conditions as possible.

(c) The review of the services furnished by the Common Management so as to ascertain that the provision of travelling

facilities is adequate and convenient, having regard to the financial resources available.

(d) The determination of a general basis of fares, rates and charges, including the provision, as required, of special fare facilities; for example cheap fares for workmen.

The Minister would then be required to refer all such applications to the London Traffic Advisory Committee for investigation, and, if approved, he would issue an Order accordingly.

The London County Council introduced legislation in the session of Parliament of 1929 to enable it to enter into agreements with the Underground Electric Railway Companies of London, Ltd., and others, with regard to the passenger transport undertakings owned by them, embodying the principles of common management and a common fund, and to provide for the Minister of Transport, acting after advice from the London and Home Counties Traffic Advisory Committee, to be the supervisory authority for the protection of the public. The legislation failed to pass the House of Commons.

### **LONDON PASSENGER TRANSPORT BOARD**

The London Passenger Transport Act, 1933, provided for the establishment of the London Passenger Transport Board with the object of securing the provision of an adequate and properly co-ordinated system of passenger transport for the London Passenger Transport Area. The Act, which was a Government measure to embody revised proposals for dealing with passenger transport services in the London Traffic area, vested in and transferred to the new Board a number of specified undertakings within the area, including the tramways undertaking of the County Council. Restrictions are imposed on the carriage of road passengers by persons other than the Board in the "special area" (i.e. such part of the London Passenger Transport Area as lies within the London Traffic Area). The London Traffic Act, 1924, which would have expired on the 31st December, 1933, was amended and made permanent. The Act also revised the constitution of the London and Home Counties Traffic Advisory Committee and extended the duties of the committee.

### **LONDON AND HOME COUNTIES JOINT ELECTRICITY AUTHORITY**

Since the Electric Lighting Acts were passed, which regulate the industry, there has been a revolutionary progress in the application of electric power. It has been brought into the service of man in every phase of life. The perspective is entirely changed, and it is an accepted belief that the only way to get the cheapest



electric power is to generate in bulk, on a large scale in big stations, and change many of the existing generating stations into transforming and distributing centres. Nothing could have been more short-sighted or wasteful than the way in which London was committed to a series of undertakings, sometimes competitive, producing from a number of small stations instead of from a small number of large stations.

In the natural course of events inter-connections began with one municipality supplying its neighbours either in bulk or direct to consumers. Company undertakings did the same, and there was a good deal of inter-connection between the two kinds of undertakings. Then followed the formation of large power companies over areas which had only been partially developed, and whose primary function was to supply distributors.

To hasten the progress of this phase of development and promote mass production, the Coalition Government passed the Electricity (Supply) Act, 1919. This constituted the Electricity Commission as part of its after-war industrial reconstruction policy. It was intended that the Commission should be a national authority with district Boards, which were to have compulsory powers to acquire generating stations without the consent of the owners, and to exercise generally autocratic authority with regard to the production, supply, and distribution of electricity.

The scheme lost its compulsory powers in its progress through Parliament. The Electricity Commission functions under the Act of 1919 and an amending Electricity (Supply) Act of 1922. It has set up fifteen Advisory Boards to act as intermediaries between the various undertakings in their area and the Electricity Commission. In the London and Home Counties area a Joint Electricity Authority has been set up which possesses full administrative powers, and controls the district in consultation with each individual undertaking.

The powers and duties of the Joint Electricity Authority and the Electricity (Supply) Act, 1926, are dealt with in Chapter XVI.

## CHAPTER XXXI

### SCOTLAND

#### SCOTTISH LOCAL AUTHORITIES

SCOTTISH Local Government has always developed upon lines distinct from those in England and Wales. This is doubtless due to the recognition of the ancient powers which had been conferred upon the Scottish local authorities by the Scottish Parliament prior to the Act of Union, 1707.

The British Parliament at Westminster passes legislation which is applicable to Great Britain, but in certain instances is applicable to Scotland, but not to England and Wales.

In Scotland there were large numbers of local authorities which administered public services for very small areas, and the need for a reduction in the number of these authorities, and an enlargement of the units of administration had been generally realized in recent years, and had been given effect to in connection with certain services, e.g. the treatment of infectious diseases. It was an essential element of the Government scheme which was incorporated in the Local Government (Scotland) Act, 1929, that the opportunity should be taken of effecting a wide-reaching reform in this sphere, which would make for an increase in simplicity and efficiency of administration. One important object kept in view was the unification of administrative and financial control of the major services under a single authority in each area. By this means it is hoped—

- (1) to prevent overlapping of services such as existed;
- (2) to make better and fuller use of the numerous institutions belonging to local authorities;
- (3) to secure more effective control over local expenditure by the authority of the area, not only with a view to economy, but also with a view to seeing that that expenditure is being applied to the best advantage according to the needs, financial ability, and other circumstances of the area; and
- (4) generally to promote efficiency in administration of the various services, thereby adding to the well-being of the persons for whom the services are administered.

Before 1929 the principal local authorities in Scotland were—

- (a) County Councils.
- (b) Burgh Councils (Royal, Parliamentary, and Police Burghs).
- (c) Parish Councils (the equivalent of Boards of Guardians in England and Wales).

- (d) Education Authorities.
- (e) District Committees.
- (f) District Boards of Control.
- (g) County Road Board.
- (h) Standing Joint Committee.

The Act of 1929 abolished Parish Councils, Education Authorities, District Committees and District Boards of Control, and transferred from the smaller authorities to authorities operating the enlarged areas the administration of the major health services. The schemes are dealt with in greater detail in the paragraphs which follow.

## CENTRAL DEPARTMENTS

As in England and Wales, the duty of seeing that Acts of Parliament are duly carried out by the local authorities devolves upon certain Central Departments of the State. Those which relate to Scotland are mostly housed at Edinburgh. The office of the Secretary of State for Scotland is in Whitehall, London, but there is now a similar office in Edinburgh.

The Secretary of State for Scotland. The principal Central Department linking the legislature with the local authorities is that of the Secretary of State for Scotland. This office was created by the Secretary for Scotland Act, 1885, as the result of the growing dissatisfaction of the Scottish people at the existing mode of administration of Scottish affairs. In 1926 the status of the office was raised to that of a Secretary of State, and the Act makes provision for the appointment of a Parliamentary Under-Secretary of State. To the Secretary of State for Scotland were transferred those powers relating to Scotland previously held by the Privy Council, the Home Office, the Treasury, and the Local Government Board for England. The Secretary also became President of the Scottish Education Department. To these offices others have since been added, including that of President of the Department of Health for Scotland.

At present the principal powers and duties include: Registration of Births, Marriages, and Deaths; control of the Fishery Board for Scotland; Police and Prisons; Public Parks; Markets and Fairs; Roads and Bridges; Housing and Town planning; Valuation of Lands and Railways; and Audit of Local Authority Accounts. He has power to appoint members of the Scottish Land Court and of the Department of Agriculture for Scotland. The Secretary of State for Scotland is appointed by warrant under the Royal Sign Manual by the delivery of the Great Seal of Scotland, of which he is the Keeper.

**The Lord-Advocate.** The Lord-Advocate is the legal representative of the Crown in Scotland and legal adviser to the Secretary of State. The office is a political one, the holder being a member of the Government, but not as a rule a member of the Cabinet. The office is similar to that of Attorney-General in England.

**The Scottish Boards.** The Secretary of State for Scotland was not only head of the Scottish Office but was also head of all the other departments of Scottish business. With the exception of the Education Department, the control of the great branches of administration was placed in the hands of Boards. The Scottish Boards were composed of a number of persons who, unlike most of the Boards for England and Wales, did periodically meet, and at all times took an active part in the control of the work. Each Board had a Permanent Secretary and staff, and each submitted a Report annually to the Secretary of State.

**The Reorganization of Offices (Scotland) Act, 1928,** transformed three Scottish Boards into Departments under the direction of the Secretary of State for Scotland. This means that they become departments of the Whitehall type, with civil servants at their head instead of politically appointed chairmen. The Scottish Board of Health, the Board of Agriculture for Scotland, and the Prison Commissioners for Scotland have ceased to exist, and the powers and duties of the Boards (in which expression the Prison Commissioners for Scotland are included) were respectively transferred to and vested in a Department of Health for Scotland, a Department of Agriculture for Scotland, and a Prisons Department for Scotland, acting under the control and direction of the Secretary of State, and consisting of a secretary and such other officers and servants as the Secretary of State, with the consent of the Treasury, may determine.

**The Department of Health for Scotland** was established by the Reorganization of Offices (Scotland) Act, 1928, when it replaced the Scottish Board of Health which was constituted in 1919 for the purpose of promoting the health of the people throughout Scotland. The Parliamentary Under-Secretary of State is responsible under the Secretary of State for the administration of the Board in the exercise and performance of all powers and duties under the Act. The Secretary of State for Scotland is the President and the Parliamentary Under-Secretary of State is the Vice-President of the Department by virtue of their respective offices. The Board consisted of the appointed members of the former Local Government Board for Scotland, and two of the Scottish Insurance Commissioners nominated by the Secretary

of State. The Act provided that the Department should at all times include two registered medical practitioners, one or more women, and a member of the Faculty of Advocates or law agent of not less than ten years' standing. The number of members (other than *ex-officio* members) should at no time exceed six, making a total of nine members, and the appointments were made by the Secretary of State.

The Department of Health for Scotland has had transferred to it all the powers and duties of the (i) Local Government Board for Scotland, established by the Local Government (Scotland) Act, 1894, the Scottish Insurance Commission, the Privy Council, and the Lord President of the Council under the Midwives (Scotland) Act, 1915; (ii) the powers and duties of the Secretary for Scotland under the Rivers Pollution Acts, the Births, Marriages, and Deaths Acts, the Burial Grounds Acts, the Vaccination Acts, and the Highlands and Islands (Medical Service) Grant Act, 1913; (iii) the Scottish Education Department with respect to medical inspection and treatment of children and young persons. The Department is assisted by Consultative Councils, as in the case of the Ministry of Health in England.

The Scottish Education Department is the central authority for education in Scotland. It consists of a Committee of the Privy Council. The Lord President of the Council is *ex-officio* the head, and always signs the Annual Report. The responsible Minister, however, is the Secretary of State, who, by the Act of 1885, is *ex-officio* Vice-President of the Committee. The Committee never meets, and the Secretary of State remains the responsible Minister, assisted by the Permanent Secretary of the Department. The Scottish Education Department exercises wide powers in relation to the instruction to be given in schools, inspection of schools, and kindred matters. It regulates the distribution of the education grants, conducts examinations for teachers, etc. Its consent is necessary to any loan obtained by local education authorities for building purposes. It also regulates the conduct of elections to the Scottish Education Authority.

The Department of Agriculture for Scotland. In Scotland there are separate Boards of Agriculture and of Fisheries under the control of the Secretary of State, which administer the same Acts for Scotland as the Minister of Agriculture and Fisheries does for England and Wales, with the exception of the Diseases of Animals Acts and the Ordnance Survey Acts. These latter Acts are administered by the Minister of Agriculture and Fisheries for the whole of Great Britain. In 1911 the Board of Agriculture for Scotland was constituted. To this Board was transferred

the work in Scotland which was formerly performed by the Board of Agriculture and Fisheries of England.

**The Fishery Board of Scotland.** It was established in 1882, for the purpose of taking over the powers and duties conferred on the Board of British White Herring Fishery by the Herring Fishery Acts, 1868-75. As originally constituted, the Board consisted of nine members. Since 1895 the Board has consisted of seven members, viz. four representative of the various Scottish sea-fishing interests, one is the Chairman, another is a Sheriff of a Scottish county, and the remaining member is a specialist in oceanography. The Board carry out important works for the control, protection, and supervision of fishing and also conduct valuable research work in this connection.

**The General Board of Control for Scotland** received its name in 1913, when the construction of the General Board of Commissioners in Lunacy, established in 1857, was slightly modified. It consists of six commissioners, viz. an unpaid chairman, two unpaid legal commissioners, and three paid medical commissioners. Their duties in regard to the supervision of the insane are analogous to those of the English Board of Control.

**The Commissioners of Northern Lights** are responsible to the Board of Trade.

## LOCAL AUTHORITIES

**The Local Government (Scotland) Act, 1929**, has fundamentally altered the constitution of local government in Scotland. Broadly speaking, the local authorities are now regulated by the Burgh Police Acts and the Local Government (Scotland) Act, 1929.

As a result of the Reforms effected by the Act of 1929 the local authorities in Scotland are—

- (i) County Councils.
- (ii) Burgh Councils (Royal, Parliamentary, and Police Burghs).
- (iii) District Councils.

These alterations in the system of local government took effect as from 16th May, 1930.

The Act provides, broadly speaking, for the administration of the major public services in large burghs, i.e. burghs with a population of 20,000 or over by the Town Councils, and in the remaining area by the County Councils. This is subject to the exception that the Town Council of a large burgh unless it is a county or a city will not be a local education authority, and in certain cases will not be a police authority. The Town Councils of burghs with a population of less than 20,000 will continue to

administer the considerable portion of their existing powers and duties not transferred to the County Council.

**Scheme of Administration.** The Act of 1929, Sect. 14, provided that—

(i) The County Council of every county; and

(ii) The Town Council of every large burgh

should on or before 31st March, 1930, prepare and submit to the Secretary of State for his approval a scheme or schemes of administrative arrangements proposed to be made for discharging throughout their area the functions of the council relating to (a) education, (b) poor law, (c) public health, (d) lunacy and mental deficiency, and (e) in the case of a County Council, roads.

A "large burgh" means a burgh containing a population of 20,000 or upwards, and includes the burgh of Arbroath. A "small burgh" means any burgh other than a large burgh. (Sect. 77.)

The Act of 1929 authorizes the Secretary of State by Order to make any adaptations or modifications of the provisions of any Act necessary to bring those provisions into conformity with the provisions of the Act of 1929. (Sect. 76 (1)1.) In accordance therewith the Secretary of State for Scotland issued the Local Government (Scotland) Adaptation of Enactments Order, 1930. Sect. 76 (3) directs that an Order may not be made after 31st December, 1930.

**Combination of Local Authorities.** The Act of 1929, Sect. 11 (1), provides that any two or more local authorities may combine for any purpose in which they are jointly interested, on such terms and conditions as may be agreed between them, and that any such agreement may provide for the appointment of a joint committee of the authorities concerned. Sect. 11 (2) gives power to the Central Department, on the application of a local authority, if it shall appear to the Department that the combination of that authority with any other local authority or authorities for any purpose would be of public or local advantage, to make an order combining the areas of the local authorities or parts thereof for the purpose specified therein. An order shall not be made under this section, except after a local inquiry, unless all the local authorities concerned consent.

**Committees.** The 1929 Act provides that every administrative scheme may, and shall if the Secretary of State so requires, provide that the council shall appoint a committee or committees for the purpose of any functions to which the scheme relates; and may provide for the Town Council of any small burgh within the county or the District Council or a Joint Committee to act as agents for the County Council. (Sect. 12.)

Each County Council and the town council of each burgh being a county of a city shall have an education committee. (Sect. 12 (1).)

Every County Council is required to appoint a committee for (a) police and (b) for poor law. (Sect. 12 (2).)

Sect. 12 (6) prevents the delegation to a committee of the power of levying a rate or raising a loan or incurring capital expenditure.

**Qualifications.** The County, Town, and Parish Councils (Qualification) (Scotland) Act, 1914, provides that any person, of either sex and of full age, and not being subject to any legal incapacity, is qualified to be elected a councillor, if that person has resided within such County, Burgh or Parish as the case may be during the whole of the twelve months preceding the election. This qualification is in addition to any other qualification.

The Act of 1929, Sect. 9 (2), provides that Sect. 7 of the Local Government (Scotland) Act, 1889 (which relates to the qualification of county councillors), so far as unrepealed, and Sect. 1 of the County, Town, and Parish Councils (Qualification) (Scotland) Act, 1914, so far as relates to County Councils, shall cease to have effect, and that as from the 1st October, 1929, no person shall be qualified to be elected or to be a county councillor for an electoral division of a county unless—

(a) he is at the time of the election registered as an elector entitled to vote at an election of a county councillor for an electoral division of the county, or as an elector entitled to vote at an election of town councillors of any burgh included within the county for any purpose; or

(b) he is a person of full age and not subject to any legal incapacity and has, during the whole of the twelve months preceding the election, resided within the county, including any such burgh as aforesaid.

**Disqualifications.** A person in Scotland is not disqualified for being a councillor on account of being in receipt of poor relief. (See Representation of the People Act, 1918, Sect. 9 (1); County, Town and Parish Councils (Qualification) (Scotland) Act, 1914, Sect. 1; and Town Councils (Scotland) Act, 1900, Sect. 12.)

## COUNTY COUNCILS

The County Council is the authority entrusted with the management of the administrative and financial business of the county.

County Councils were established by the Local Government (Scotland) Act, 1889. The purposes of this Act were—

(a) The establishment of a single authority in each county to take over the administrative powers and duties previously performed by several different bodies.



(b) The vesting of new powers not previously exercised in the counties.

(c) The creation of a representative body instead of authorities which were established by virtue of possession of certain lands and heritages.

County Councils are the equivalent of the County Councils in England and Wales, and are elected under the same system as the Town Councils in Scotland. The number of County Councillors is fixed by the Secretary of State. The county is divided into electoral divisions to conform to a scheme prepared by the Secretary of State for Scotland.

**Reconstitution of County Councils.** The Local Government (Scotland) Act, 1929, Sect. 8, provided that the County Council should be reconstituted as follows as from the 1st October, 1929—

(a) The County Council shall consist of members elected for the landward area and of members of the Town Councils of burghs (including police burghs) appointed by them included within the county for any purpose whether under this or any other Act.

(b) The members representing the landward area of the county shall be elected for the electoral divisions of the burgh (not being police burghs or part of police burghs). In accordance with Sect. 9 (1) the members were elected on the first Tuesday of December, 1929, and the members elected held office for three years.

(c) The members representing the burghs shall be elected by the Town Councils of the burgh, and for that purpose the provisions of Sect. 8 of the Local Government (Scotland) Act, 1889, shall apply with the necessary modifications to all the burghs.

The Secretary of State has power by order to determine the number of members of the County Council.

The Act of 1929, Sect. 10, and the Second Schedule, make provisions for combining counties for certain purposes.

The Chairman of the County Council is elected annually by and from the members, and is called the Convener of the County.

**Combination of Counties.** To meet the case of the smaller counties, power was taken by Section 10 of the 1929 Act and the Second Schedule thereto to combine counties for all administrative purposes, and also to combine contiguous burghs. The Standing-Joint Committee ceased to exist. Special provisions were necessary for the regulation of the performance of the extensive new duties of the County Council, and wide powers given of delegation of functions to committees of the council and to Town Councils of burghs within the county. Provision was made for the due representation on the council of burghs with a population of less than 20,000, and for a re-determination

of the numbers of county councillors and the number and boundaries of electoral divisions. The burghal representatives on the County Council are nominated by Town Councils from their own numbers, and the system of triennial election of County Councils continued. Provision was also made for the representation on the County Council, as education authority, of burghs (except the four large cities) with a population of 20,000 and over, and for the representation on the County Council, as police authority, of burghs up to 50,000 population which have not a separate police force.

**Committees.** The Act of 1929, Sect. 12 (2), provides that every County Council shall appoint committees for the purposes of their functions relating to (a) police and (b) poor law, as well as the education committee referred to in the section on Education. All matters relating to the exercise by a County Council of their functions (other than functions connected with the raising of money by rate or loan) relating to (a) education, (b) police, and (c) poor law, shall stand referred to the appropriate committee.

**Expenses of Members of County Councils.** The Act of 1929, Sect. 17, provides that a County Council may incur expenditure in paying allowances at rates not exceeding those set out in the Fourth Schedule to the Act in respect of travelling and other personal expenses necessarily incurred and time necessarily lost from ordinary employment by members of the council or of any committee or sub-committee thereof in attending meetings of such council, committee, or sub-committee.

**Power of Delegation.** The Act of 1929, Sect. 13, provides that a County Council may, on such terms and conditions as the councils may agree, appoint—

(a) the Town Council of any small burgh within the county;

or

(b) the District Council of a district within the county;

or

(c) a Joint Committee of such a Town Council or District Council (of which Joint Committee the members of the County Council for the burgh and district shall be members);

to act as the agents of the County Council to carry out any function (other than a function relating to education or police) vested in the County Council and exercisable within the small burgh or district, or small burgh and district as the case may be.

The section only permits delegation of functions relating to the treatment of disease with the approval of the Department of Health.

**POWERS AND DUTIES****I. The County Council replaced in 1889—**

(a) The Commissioners of Supply, who had been the chief county administrators, and the rating authority. The duty of levying and collecting the rates was transferred to the County Council. The Commissioners of Supply were not, however, entirely abolished. They met annually to appoint a Chairman, and selected not more than seven representatives from among themselves to form, with an equal number of members of the County Council and the Sheriff-Principal, the Standing Joint Committee. This Committee constituted the Police Authority, and controlled the capital expenditure of the county. It was dissolved by the Act of 1929, Sect. 5 (5).

(b) The Local Authority, under the Contagious Diseases (Animals) Act, formerly composed of Commissioners of Supply and an equal number of representatives of farmers. Their power of ordering the destruction of diseased animals was transferred to the County Council, but control over dairies and cowsheds was given to the Department of Health for Scotland.

(c) Local Authority, under the Public Health Acts in respect of nuisances, diseases, drainage, and water supply in respect of work previously done by Parochial Boards.

(d) Justices of the Peace, including most of their administrative powers, such as those in relation to: (a) gas meters; (b) explosive substances; (c) weights and measures; (d) habitual drunkards; (e) wild birds; (f) appointment of visitors to asylums; but not their functions under the licensing of hotel public houses, etc.

**II. The new powers and duties which were conferred upon the County Councils by the Act of 1889 included—**

(a) Appointment of fully qualified medical practitioners and fully qualified and experienced sanitary inspectors.

(b) Powers under the Pollution of Rivers Acts.

(c) Power to promote and oppose Bills in Parliament.

(d) Power to make by-laws against vagrancy and nuisances not already punishable.

(e) Financial provisions relating to estimates, rates, and audit. A consolidated rate was provided, the demand note for which must contain details of the separate amounts due in respect of each service.

**III. New powers and duties under the Local Government (Scotland) Act, 1929.**

The Act of 1929, Sect. 1 (2), transferred to the County Council—

1. The functions of Parish Councils so far as relating to the

county or any part thereof (excepting those functions relating to landward areas which are transferred to District Councils).

2. The functions of District Boards of Control so far as relating to the county or any part thereof. (Sect. 5 (4).)

The Act of 1929, Sect. 2—

i. Transferred to the County Council—

(a) All the functions of the District Committees of the districts within the county.

(b) The functions of Town Councils of small burghs within the county as local authorities for the purposes of the statutory provisions set out in Part I of the First Schedule to this Act.

(c) The functions of the Town Councils of small burghs within the county as highway authorities so far as related to classified roads.

(d) All the functions of the Commissioners of Supply of the county.

(e) The functions of the Town Council of any burgh under the Burial Grounds Acts and the Cremation Act, 1902, in respect of any area outside the Burgh.

(f) The functions of the Town Council of any large burgh under the Registration of Births, Marriages, and Deaths Acts, so far as relating to any area outside the burgh and within the county.

2. It shall be lawful for the Secretary of State by order to transfer to the Council of a county the functions of the Town Councils of the small burghs within the county as local authorities for the purpose of certain statutory matters.

3. Where any road vested in the Town Council of a small burgh becomes a classified road, the road becomes vested in the County Council.

4. The County Council may exercise the power of appointing general commissioners, transferred from the Commissioners of Supply, at any general meeting of the council, the notice of which has specified the appointment as an item of business.

Sect. 3 transfers to the County Council—

(a) The functions of the education authority for the purposes of the Education (Scotland) Acts, 1872 to 1928, for that county, excluding the area of a burgh being a county of a city.

(b) The functions of the Town Councils as police authorities of all burghs except large burghs which now maintain a separate police force.

(c) The function as to registration of electors of the Town Council of any small burgh which was a registration area under Sect. 43 of the Representation of the People Act, 1918.

A county clerk may appoint one or more persons approved by the County Council to act as his depute or deputies, and all

things required or authorized by law to be done by or to the county clerk may be done by or to any depute county clerk so appointed. (Local Government (Scotland) Act, 1929, Sect. 43.)

There has been transferred to County Councils under the scheme—

(a) The powers and duties of Parish Councils in landward areas and in burghs with a population of less than 20,000.

(b) The powers and duties of District Committees relating to Public Health, Roads and Highways, etc.

(c) Certain of the powers and duties relating to Public Health of Town Councils of burghs with a population of less than 20,000, which will include—

1. Town planning.
2. Hospital and other institutional services.
3. Infectious diseases (including tuberculosis and venereal diseases).

4. Maternity and child welfare.

5. Sale of Food and Drugs Acts and Milk and Dairies Acts.

6. Classified roads.

7. Prevention of river pollution.

(d) The powers and duties relating to the management and maintenance of classified roads of burghs with a population of less than 20,000.

(e) The powers and duties of burghs with a population of less than 20,000 relating to the valuation of lands and heritages.

(f) The powers and duties of Education Authorities, except in the cities of Edinburgh, Glasgow, Aberdeen, and Dundee.

(g) The control and management of the police in burghs with a population of less than 50,000, except burghs over 20,000 which had a separate police force.

(h) The powers and duties of the Standing Joint Committee in relation to the police.

The powers and duties of District Boards of Control are transferred to County Councils and Town Councils of burghs with a population of 20,000 and over. The asylums for the several lunacy districts are managed in each case by a Joint Committee of the constituent authorities within the district.

**Powers and Duties in Special Areas.** There are transferred to the Town Council of Glasgow the powers and duties of the District Boards of Control of Glasgow and Govan, and to the Town Councils of Edinburgh, Aberdeen, Dundee, and Paisley the powers and duties of the District Boards of Control of these areas respectively; there is transferred to the Town Councils of Edinburgh, Glasgow, Aberdeen, and Dundee the powers and duties of the Education Authorities of these burghs respectively; and to the

Town Councils of all burghs with a population of 20,000 or over the powers and duties of the Parish Councils in their areas. The opportunity has been taken to carry out certain outstanding reforms of the Scottish Poor Law.

**Officers.** Officers include County Clerk and Depute together with the officers of an English County Council.

## BURGHs

Burghs, which are the equivalent of the provincial boroughs in England and Wales, are of three classes, viz. Royal Burghs, Parliamentary Burghs, and Police Burghs.

The **Royal Burghs** were incorporated by Royal Charter and hold their rights directly from the Crown, e.g. the Royal Burgh of Ayr.

The **Parliamentary Burghs** were created under the Reform Act, 1832. Such burghs received the right of sending members to Parliament, e.g. Dundee, or were grouped together for that purpose.

Broadly speaking, Royal and Parliamentary Burghs correspond to County Boroughs in England and Wales.

Prior to the Act of 1929 they were independent of the County Councils except where the population was less than 7,000 or they did not maintain a separate police force.

The **Police Burghs** consist of towns of seven hundred inhabitants and upwards, and are constituted under the Burgh Police (Scotland) Act, 1892, Sect. 4 (25) and (26). The boundaries thereof have been fixed under the General Police Acts, or under any Local Police Act, or under the Burgh Police (Scotland) Act, 1892. Roughly, they are the equivalent of the Urban Districts and Non-County Boroughs in England and Wales, e.g. Callander.

The Act of 1929, Sect. 3 (3), provides that every burgh shall be supplied with constables by the county in which it is situated, except—

(a) a large burgh which at the date of the passing of this Act maintained a separate police force; or

(b) a burgh with respect to which it shall at any time be proved in accordance with Sect. 78 of the Burgh Police (Scotland) Act, 1892, that it has a population of not less than 50,000.

The Act of 1929, Sect. 36, provides that the Secretary of State, on the representation of the Town Council of any "large burgh," shall by order determine or alter the number of councillors and magistrates of the burgh, or the number and boundaries of the wards into which the burgh is divided, or the number of councillors to be elected for each ward, and apportion the existing

councillors or any increased or decreased number of councillors amongst the wards. The provisions of the Town Councils (Scotland) Act, 1900, were modified accordingly as from 1st October, 1929.

The Act of 1929, Sect. 10, and the Second Schedule, make provision for uniting burghs and combining counties for certain purposes.

The Town Council is elected in accordance with the Town Councils (Scotland) Act, 1900, and consists of the provost, bailies, and councillors. The provost and bailies are elected in the usual way, and are afterwards appointed to their respective offices by the council.

The Provost is the equivalent of the Mayor in England and Wales. He is elected by the whole of the council, and holds office for three years. He is unpaid, but in some of the cities he is granted an allowance to cover his expenses for entertaining visitors, etc.

The Bailies are the equivalent of aldermen in England and Wales. They are elected by the whole of the council, and retain office for the same period as originally elected as councillors. They are magistrates, and in towns of over 7,000 inhabitants they, along with the provost, constitute the Licensing Bench. (Licensing (Scotland) Act, 1903, Sect. 3.)

The Councillors are elected every November, as in England and Wales, and hold office for three years, one-third retiring annually.

Meetings are held at varying intervals, e.g. in the City of Glasgow they are held fortnightly, but were at one time held weekly. In other burghs the meetings are monthly.

Committees are appointed, the chairmen of which are termed Conveners. The Dean of Guild Court, by which the Buildings Acts are administered, is a Committee of the Town Council, and it is also in some Burghs an ancient Court of the Realm. Its chairman is called the Dean of Guild.

The Act of 1929, Sect. 12 (5), provides that any committee of a Town Council (other than an Education Committee or a School Management Committee) which is appointed for the purpose of any function to which an administrative scheme under the Act applies, may to an extent not exceeding one-third of the members consist of persons (not being members of the council) who have special knowledge or experience in regard to the functions of the committee.

The following are the Standing Committees of a typical burgh: Bills and Law; Cleansing; Electricity; Finance; Gas; Housing; Industrial Development; Links and Parks; Plans and Sewerage; Public Health; Streets and Roads; Tramways;

Watching, Lighting, and Fires; Water; Public Assistance. Special Committees include the Burgh Valuation Committee under the Lands Valuation (Scotland) Acts; Special Relief Funds; Guildry, and Mortification Funds.

**Powers and Duties.** The powers and duties of the burghs include the following matters; viz. public health, roads and bridges, vaccination, housing, street cleansing and lighting, markets and slaughter-houses, police, fire protection, parks, gardens, public buildings, and the administration of the Acts relating to public assistance, registration, weights and measures, and valuation.

The Local Government (Scotland) Act, 1929, Sect. 3 (1), provides that the Town Council of a burgh being a county of a city shall be the education authority for the purposes of the Education (Scotland) Acts, 1872 to 1928.

The Act of 1929, Sect. 3 (7), provides that large burghs shall be the registration areas for the purpose of Paragraph (8) of Sect. 43 of the Representation of the People Act, 1918.

The Act of 1929, Sect. 4, provides that the functions of a County Council as local authority for the purpose of the Valuation Acts so far as relate to any large burgh shall be transferred to and vest in the Town Council of that burgh.

**Officers.** Officers of a burgh include the Town Clerk and Depute together with the usual officers appointed in an English borough.

## DISTRICT COUNCILS

District Councils are established in accordance with the Local Government (Scotland) Act, 1929, Sect. 25.

**Constitution.** The County Council of every county were required, on or before the 1st February, 1930, to prepare and submit to the Secretary of State for his approval a District Council scheme. The scheme shall divide the landward part of the county into districts in such a manner that each district shall comprise one or more electoral divisions. "Landward Area" means any portion of the County not included in a Burgh. Any new scheme altering the boundaries of a district may make provision for financial adjustments, and for doing anything which may be required or be expedient for the proper carrying into effect of the new scheme.

The District Council consists of the number of members specified in the District Council scheme. The members of the County Council for the electoral divisions within the district shall be *ex-officio* members of the District Council. The other members of the District Council shall be elected for the electoral



division within the district, or for wards forming part thereof, as may be provided in the scheme. The first election of members of the District Council took place on the 8th of April, 1930, and the members so elected held office until the next election of members on the first Tuesday of December, 1932. They hold office for three years and go out at the same time as County Councillors, subject to re-election.

Every District Council shall be incorporated under the name of the District Council of the district, and any deed or other document shall be deemed to have been duly executed by the District Council if signed on their behalf by two members and the clerk.

**Meetings.** The provisions of the Local Government (Scotland) Act, 1894, applicable to Parish Councils with respect to meetings, conduct of business, the use of school rooms, and returns to the Secretary of State as to outstanding loans shall, with the necessary modifications, apply in the case of District Councils.

**Powers and Duties.** Sect. 13 of the 1929 Act provides that a County Council may on such terms and conditions as the councils concerned may agree, appoint the District Council or a Joint Committee of the District Council and the Town Council of a small burgh in the county to act as their agents to carry out any functions other than a function relating to education or police vested in the council, and exercisable in the district, or the district and the burgh as the case may be. Sect. 14 similarly enacts that an administrative scheme under that section may provide for the County Council appointing a District Council or a joint Committee of a District Council and Town Council as their agents.

A District Council may make by-laws for preserving and regulating any recreation ground, common, bleaching green, open space, or other place of public resort or recreation within the district, and not under the control of any other local authority; regulating the use of the same, and ensuring good order in the use thereof.

**Officers.** Every District Council shall appoint a clerk, who shall hold office during the pleasure of the council and be paid such reasonable salary as the council may think proper.

**Accounts.** The provision of the Local Government (Scotland) Act, 1889 (relating to the accounts of the County Councils), and the provision of the Third Schedule of the Local Government (Scotland) Act, 1929, relating to audit of accounts of County Councils and Town Councils, shall, with the necessary modifications, apply in the case of District Councils.

The special parish rate leviable under Part IV of the Local Government (Scotland) Act, 1894, shall, after the commencement of the 1929 Act, be termed the District Council Rate, and all expenses falling to be met by a District Council, whether under Part IV of the Act of 1894 or otherwise, shall be defrayed out of the District Council Rate. The limit of the District Council Rate shall be one shilling in the pound. The amount of the District Council Rate shall be obtained by precept on the County Council.

## EDUCATION

The Act of 1929, Sect. 3, provides that the Town Council of a burgh being a county of a city shall be the Education Authority for the purposes of the Education (Scotland) Acts, 1872 to 1928, for that burgh, and the County Council of a county shall be the Education Authority for the purpose of the said Acts for that county including the burghs therein.

The Act of 1929, Sect. 5 (4), provides that the statutory provisions regulating the election, appointment, and constitution of Education Authorities shall cease to have effect, and the members of the said authorities shall cease to hold office.

Parish schools were first provided in 1696. The system was supplemented by the provision of additional or "side" schools in 1803. In both cases the funds were provided out of the parish rates, and the control of the schools was in the hands of the minister and presbytery of the parish. In 1838 the Treasury provided for the endowment of additional schools in certain parishes, mainly in the Highlands and Islands. In 1871 School Boards were established.

The powers and duties of the Education Authorities include other functions besides those performed by the former School Boards. They have power to facilitate attendance at secondary schools and other institutions. They have duties relating to the provision of food, clothing, bursaries, travelling expenses, and fees, and the provision of books for general reading, not only for children and young persons attending schools or continuation classes, but also for education of the adult population resident in the county. Every Education Authority may supply or aid the supply of nursery schools, and make arrangements for attending to the health, nourishment, and physical welfare of children attending nursery schools. The Education Authority may contribute to the maintenance of certain schools and institutions, and also in respect of resident and non-resident pupils attending schools. The duty of every parent includes the provision of efficient education for his children until the age of 14 years. Exemption

from attendance at school may not be granted to any child who has not attained the age of 13. Every Education Authority is required to submit a scheme or schemes for the part-time instruction in continuation classes of all young persons up to the age of 18 years within the area of the Authority.

Every Education Authority has powers and duties as to—

- (a) General control of expenditure.
- (b) Appointment, transfer, remuneration, and dismissal of teachers.
- (c) Appointment of bursars and facilitating attendance at secondary schools.

(d) Recognition, establishment, or discontinuance of intermediate or secondary schools, or of centres of advanced technical instruction.

**Committees.** The Local Government (Scotland) Act, 1929, Sect. 12, provides that each County Council, and the Town Council of each burgh being a county or a city, shall have a committee to be known as the Education Committee, and to be constituted in accordance with a scheme made by the council and approved by the Scottish Education Department after publication by the council in such manner as to make the scheme known to persons interested. All matters relating to the exercise by the local authorities of their functions (other than functions relating to the raising of money by rate or loan) relating to education shall stand referred to the Education Committee.

Every scheme constituting an Education Committee shall provide—

(a) for the appointment by the County or Town Council of at least a majority of the committee from persons who are members of the council;

(b) for the appointment by the council of persons of experience in education and of persons acquainted with the needs of the various kinds of schools in the area for which the council act;

(c) for the inclusion of women as well as men among the members of the committee; and

(d) as respects the first Education Committee to be appointed for the inclusion of one or more members of the outgoing Education Authority.

**School Management Committees** are appointed for each parish or group of parishes. Their duty is the management of schools or groups of schools throughout their area under a scheme prepared by the Town or County Council, with the approval of the Education Department in accordance with Sect. 12 (3) (a) of the Act of 1929. These Committees include representatives from (a)

the County Council, Burgh Council, and parents; (b) teachers; (c) at least one member who shall represent the religious belief of the parents of children attending transferred schools. They are subordinate to the Education Authorities.

The Universities of Scotland have always taken a share in the preparation of teachers. Since 1895 they have, by means of Local Committees, taken a part in the training of teachers also. By a Minute, in 1901, of the Council of Education, four provincial committees connected with the various Universities have been constituted for the training of both elementary and secondary teachers.

## PUBLIC ASSISTANCE

The right of those unable to earn a livelihood, through either extreme old age or infirmity, to expect public assistance has been recognized in Scotland for over 500 years—in fact, since the first Poor Law Act was passed in 1424. Those between the age of 14 and 70 were to work, unless they could satisfy the sheriffs or bailies that they were unfit, in which case they were to be given a token or licence, and allowed to beg. Those able but refusing to work were to be punished. In 1535 the Act of 1424 was renewed, with the addition that beggars must only beg in the parish of their birth. The ultimate responsibility of the parish of birth to support the poor is still recognized.

The second period in the history of the Poor Law of Scotland commenced with the passing of the Act of 1579, when a really comprehensive attempt was made to solve the problems relating to the relief of the poor. This Act was known as the Charter of the Scottish Poor Law, and regulated the Poor Law of the country for nearly three hundred years. This Act, passed in Edinburgh, was entitled "For the Punishment of the Strong and Idle Beggars and Relief of the Poor and Impotent." Under it an assessment roll was to be completed each year, the inhabitants to be taxed according to the estimation of their means and substance. Collectors were to be appointed to receive the money, which was to be collected weekly.

In 1592—a number of Acts having failed to achieve their purpose—the kirk session was called in and authorized to act as administrators. A further series of Acts and proclamations at short intervals were passed until 1696, when it was apparently decided that further legislation was futile; at least, there was no further attempt to deal with the problem until 1845. It was a notable fact that at the end of a period of 147 years without legislation, the condition of the poor was very much better than it had been at any time previous.

In 1698 it was estimated that out of a total population of  $1\frac{1}{2}$  millions, 200,000 were begging throughout the country.

The popularly elected Parochial Board under the Poor Law (Scotland) Act, 1845, was probably the principal cause of the often-heard phrase "the stigma of the Poor Law." There had been a vast advance in the treatment of the poor within recollection. That advance had come about as the result of a more enlightened view of what should be done for those who, perforce, had to come under the care of the Poor Law Authority.

The Local Government (Scotland) Act, 1894, abolished the Parochial Boards established in 1845, and created Parish Councils of from five to thirty-one members. A Parish Council included any landward committee thereof, and two or more Parish Councils acting in combination. The number of members was determined by the County Council. Election took place every third year on the same day, and in the same place and manner as the County or Town Council Election. One-quarter of the whole number of the council—not being less than three—formed a quorum. Parish Councils, which were equivalent to the Boards of Guardians in England and Wales, administered the Poor Law in urban areas.

In the larger areas, such as Glasgow, Edinburgh, and Govan, they were responsible for the well-being of lunatics, etc.

The Act of 1929, Sect. 5 (4), provided that the statutory provisions regulating the election, appointment, and constitution of Parish Councils should cease to have effect, and that the members of the said Parish Councils should cease to hold office.

The Act of 1929, Sect. 1, provided all the functions of each Parish Council (except the functions transferred to a District Council), and all the functions of each District Board of Control should be transferred to and vest in—

(a) The County Council of the county as re-constituted in accordance with the provisions therein contained, so far as the functions relate to the county (including the small burghs therein) or a portion thereof; and

(b) The Town Council of the large burgh so far as the functions relate to the large burgh or a portion thereof.

The Poor Law (Scotland) Act, 1934. This Act made permanent the Acts from 1921 to 1927 dealing with the relief to the able-bodied unemployed. These Acts were, in the first instance, passed as temporary measures, and have hitherto been continued from time to time. Several changes in the Scottish Poor Laws with regard to the treatment of casuals and the regulations governing poor houses, etc., are also included in the Act.

The subject of the Scottish Poor Laws is dealt with more fully in *Public Assistance and Unemployment Assistance* (Pitman).

### MENTAL TREATMENT

(1) Districts Board of Control, formerly known as District Boards of Lunacy, were abolished by the Local Government (Scotland) Act, 1929 (Sect. 5 (4) ).

(2) The Act of 1929 transferred the functions of the District Boards of Control to—

(a) The town councils in the case of the county cities, i.e. Glasgow, Edinburgh, Dundee, and Aberdeen;

(b) the county councils in all other cases. (Sect. 1.)

(3) By the Act of 1929, the above town and county councils were required, on or before the 31st March, 1930, to submit to the Secretary of State for Scotland a scheme of administration for lunacy and mental deficiency. (Sect. 14.)

### LOCAL GOVERNMENT (SCOTLAND) BILL, 1947.

This Bill is intended to give effect to the recommendations of the Jeffrey Committee set up in 1937, which reported in 1939. The Scottish Home Department issued an explanatory memorandum (Cmd. 7068) in March, 1947.

## CHAPTER XXXII

### SCOTTISH LOCAL GOVERNMENT FINANCE

THE Scottish system of local finance differs in many respects from that of England and Wales. The salient points of difference will be found incorporated in this chapter, and are dealt with in the same order as those matters are treated in the sections relating to England and Wales, thus facilitating easy reference, viz.—

- I. Grants in Aid.
- II. Borrowing Powers of Local Authorities.
- III. Valuation and Rating.
- IV. Financial Administration and Audits.

#### I. SCOTTISH GRANTS IN AID

The system of imperial subventions for Scotland is similar to that of England and Wales, but is quite distinct. There was a separate Local Taxation (Scotland) Account, into which were paid the proceeds of the revenues assigned therefor in lieu of the grants discontinued by the Local Government (Scotland) Act, 1889. The account was kept at the Bank of England and was operated upon by the Secretary for Scotland. The statutes which have varied the procedure with regard to the English Account have usually made corresponding regulations respecting Scotland. It is not considered necessary to outline these provisions in detail, owing to the winding up of the Account under the provisions of the Local Government (Scotland) Act, 1929, but regulations peculiar to Scotland will be found in the following Acts in addition to the general statutes—

1. The Education and Local Taxation Account (Scotland) Act, 1892.
2. The Agricultural Rates, etc., Relief (Scotland) Act, 1896.
3. The Local Taxation (Scotland) Act, 1898.
4. The Education (Scotland) Act, 1908.

The grants were paid direct to the spending authorities and there were thus no Exchequer Contribution Accounts in Scotland. As exceptions to this rule, grants for pauper lunatics were paid in the first instance to Parish Councils and for mental defectives to District Boards of Control.

As in England and Wales, since the War of 1914-18, and following the recommendations of the Kempe Committee, the system of assigned revenues has been supplemented by the payment of

new grants on the percentage of expenditure basis, e.g.: Blind Welfare, Education, Housing, Medical Services (Highlands), Mental Deficiency, Maternity and Child Welfare, Police, Roads, Registration of Voters, Tuberculosis and Venereal Diseases.

**The Reform of 1929.** The Local Government (Scotland) Act, 1929, Part III, reconstructed the system of Exchequer Grants on a similar basis to that of England, but with certain necessary modifications.

**Discontinuance of Grants.** The following grants ceased to be payable in accordance with Sect. 52 of the Act of 1929—

1. The grants payable out of the Consolidated Fund, or the growing produce thereof into the Local Taxation (Scotland) Account.

2. The grants in aid of certain health services, that is to say grants for maternity and child welfare, other than training of midwives and health visitors, grants for the treatment of tuberculosis, grants for the treatment of venereal diseases, grants for the welfare of the blind, and grants in respect of mental defectives.

3. Road grants, that is to say grants made as classification grants in respect of roads and bridges classified by the Minister of Transport as roads and bridges of Class I or Class II in large burghs, and as grants for the maintenance of unclassified roads in counties.

The grants ceased to be payable—

- (a) As regards the grants payable into the Local Taxation (Scotland) Account in respect of any period after the 31st of March, 1930, and when the account was wound up.

- (b) As regards the other grants in respect of any period after the 15th of May, 1930.

**General Exchequer Contributions.** Sect. 53 of the Act of 1929 provides that there shall be paid out of moneys provided by Parliament in respect of the year beginning on the 16th May, 1930, and each subsequent year, an annual contribution towards local government expenses in counties and large burghs to be called the "General Exchequer Contribution."

The amount of the General Exchequer Contribution shall be periodically revised. The amount first fixed shall be for a period of three years, beginning on the 16th May, 1930. The amount fixed on the first revision shall be for a period of four years from the expiration of the first period. The amount fixed on any subsequent revision shall be for a period of five years from the expiration of the previous period. A period for which the General Exchequer Contribution is so fixed is hereinafter referred to as a "Fixed Grant Period."

The Local Government (Financial Provisions) (Scotland) Act,



1941, extends the third Fixed Grant Period to a date after the War to be fixed by Parliament.

The amount of the General Exchequer Contribution shall be the sum of the following amounts—

(a) An amount equal to the total losses on account of rates of all counties and large burghs.

(b) An amount equal to the total losses on account of grants of all counties and large burghs.

(c) In respect of each year in the first fixed grant period £750,000. In respect of each year of every following fixed grant period such amount as Parliament may hereafter determine with respect to the fixed grant period, so, however, that the proportion which the General Exchequer Contribution for any fixed grant period bears to the total amount of rate and grant borne expenditure in the penultimate year of the preceding fixed grant period, shall never be less than the proportion which the General Exchequer Contribution for the first fixed grant period bore to the total amount of rate and grant borne expenditure in the first year of that fixed grant period.

The Local Government (General Exchequer Contributions) Act, 1933, provided that the amounts to be included in the General Exchequer Contribution for Scotland under Sect. 53 (3) (c) of the Local Government (Scotland) Act, 1929, should be £850,000.

The Local Government (Financial Provisions) (Scotland) Act, 1931, provides that the sum shall be determined in accordance with the Schedule to the Act.

**Payments Out of Road Fund.** Towards the General Exchequer Contribution there shall, at such times and in such manner as the Treasury may direct, be paid out of the Road Fund in respect of the year which began on the 1st April, 1930, and each subsequent year, an annual contribution amounting to the sum of the following amounts—

(a) a sum equal to the certified amount of discontinued road grants for the standard year; and

(b) in respect of each year in the first fixed grant period, eleven ninety-first parts of the sum of three million pounds; and in respect of each year of each following fixed grant period.

Such sums shall be applied as an appropriation in aid of the moneys provided by Parliament for the purposes of the General Exchequer Contribution.

**Apportionment of General Exchequer Contributions.** Sect. 55 provides that the General Exchequer Contributions shall be apportioned amongst the several counties and large burghs as follows—

(a) During the first four fixed grant periods there shall out of the General Exchequer Contribution for each year be allocated to each county or large burgh an amount equal to the appropriate percentage of the losses on account of the rates and grants of the county or burgh.

(b) During the first four fixed grant periods the residue, and thereafter the whole of the General Exchequer Contribution, shall each year be apportioned amongst the several counties and large burghs in proportion to their weighted populations.

The amount apportioned under this section to a county is called "The County Apportionment," and the amount so apportioned to a large burgh is called "The Burgh Apportionment."

**Grants to Counties.** Sect. 56 provides that out of the county apportionment of every county there shall be set aside such amount as will be sufficient to pay—

(1) to the councils of small burghs situated within the county; and

(2) to the County Council for behoof of the landward area of the county,

the sums hereafter directed to be set aside.

The residue of the county apportionment, after such sums as aforesaid have been so set aside, shall be paid to the County Council, and shall be called "The General Exchequer Grant" of that council.

Additional Exchequer Grants to counties are made—

1. As respects the first fixed grant period, a sum equivalent to one shilling per head of the estimated population of the county for the standard year where the county apportionment falls short of that amount.

2. As respects each subsequent fixed grant period, if in the case of any county the county apportionment falls short of the standard sum increased by the greater of the two following sums—

(a) a sum equivalent to one shilling per head of the estimated population of the county for the appropriate year;

(b) a sum equivalent to one-third of the excess of the county apportionment for the period in question over what would have been the county apportionment for the period in question had the General Exchequer Contribution for that period been the same as for the first fixed grant period;

there shall in respect of each year of the fixed grant period in question be paid to the council of the county a sum equal to the deficiency.

**Grants to Large Burghs.** The whole of every burgh apportionment shall be paid to the council of the large burgh, and the

sum so paid shall be called the General Exchequer Grant.

Additional Exchequer Grants are to be made to large burghs in accordance with the rules set out in the Eighth Schedule.

For the purpose of adjusting as between separately rated areas in any large burgh any decrease and increase of the poundage of rates, due to the operation of Parts I, II, and III of the Act during the period of nineteen years, beginning 16th May, 1930.

**Grants to Small Burghs, etc.** General Exchequer Grants to small burghs, and for behoof of the landward area of the county, are such sum as is required for each fixed grant period, calculated in accordance with the rules set out in Part IV of the Seventh Schedule of the Act upon the basis of the estimated population of the burgh or landward area, as the case may be, together with such sums as are required for compensation for losses on account of special rates.

Where in the standard year a special rate is levied in any area within a county, the loss on account of that rate shall be ascertained in accordance with the rules set out in Part I of the Seventh Schedule of the Act, and—

(a) the sum set aside out of the county apportionment shall, in respect of each year during the first four fixed grant periods, be increased by a sum equal to the appropriate percentage of the loss on account of the special rate incurred by the area within which the special rate is leviable; and

(b) there shall be allocated to the landward area by the County Council out of the General and Additional Exchequer Grants payable to that council in each year during the first and second fixed grant periods, a sum equal to 25 per cent of that loss, and thereafter such sums as the County Council may determine.

Supplementary Exchequer Grants to counties are to be made for the purpose of adjusting as between separately rated areas in any county any decreases and increases in the poundage of rates (other than special rates), due to the operation of Parts I, II, and III of the Act during the period of nineteen years, beginning on the 16th May, 1930.

## II. THE BORROWING POWERS OF SCOTTISH LOCAL AUTHORITIES

**Scottish Peculiarities.** Many differences exist between English and Scottish powers and procedure respecting loans of local bodies. As in England, many burghs have special powers under local Acts. Direct government control is not so greatly in evidence as in England. This is largely due to the fact that the

amounts which may be raised by rates are usually limited in Scotland and thereby the amount for annual loan charges and therefore the amount of loans. The Local Authorities Loans Act, 1945, operates in Scotland as in England. Sects. 18 and 19 of the Local Government (Scotland) Act, 1929, affect this. Local Authorities in Scotland are not authorized to invest their sinking funds in their own securities. On the other hand, a wider scope for investment in Scotland is secured by the provision that trustees are authorized to invest in bonds, debentures or mortgages secured on the rates or taxes levied under statutory authority by municipal corporations in Great Britain and any local authority in Scotland who are so authorized to borrow. This is in addition to the provisions for investment of trust funds in Housing Bonds.

**Temporary Loans.** Within specified limits local authorities have power to raise temporary loans on Bills for current expenses pending income from the collection of assessments. The usual method is by bank overdraft, but a considerable number of the larger local authorities borrow from individual lenders and issue temporary loan receipts. The usual practice is to take the money on a week or a month's call; where money is lent on a month's call it is usual to pay interest at  $\frac{1}{4}$  per cent in excess of that paid for money at a week's call.

**Permanent Debt.** The original method for the purchase of essential works of public utility when first adopted was by the granting of annuities for a fixed number of years and with provision for a sinking fund to repay the debt. Much of this debt remains as a permanent charge on undertakings such as waterworks, gasworks, etc. Scottish burghs also frequently borrow on the security of the Common Good. This term is defined on page 869. Some permanent local debt has been contracted in this way. If the loan is by issue of stock the Secretary of State for Scotland now determines the amount which may be issued and the provisions for its repayment.

The principal statutes conferring borrowing powers on local authorities in Scotland, with particulars as to maximum periods of repayment, are given in the table on page 862.

**Issue of Stock by Scottish Local Authorities.** General powers are granted to certain local authorities, with consent of the Secretary of State for Scotland, to raise loans by stock issues under the Local Authorities Loans (Scotland) Acts, 1891-1924. Such issues are secured upon all the properties, rates, and revenues of the local authority. The rate limitations do not operate against the provision of rate income for provision for stock redemption. Under regulations issued by the Secretary of State for Scotland, more than one class of stock may be issued on differing terms

and conditions. Stocks must not be issued at a price less than 95 per cent without the special consent of the Secretary of State. Loans rank *pari passu* with all other loans of the local authority, and this accounts for many of the larger authorities seeking wider powers by Private Act.

**Loans and the 1929 Reform.** The Local Government (Scotland) Act, 1929, Sect. 23, provides that any sums borrowed after the commencement of the Act by a County or Town Council under powers conferred by any enactment, whether passed before or after the commencement of the Act, shall be borrowed upon the security of all funds, rates and revenues of the council. All sums borrowed before the commencement of the Act by any such council on the security of any specified rate, shall be deemed to have been borrowed upon the security of all the funds, rates, and revenues of the council liable in repayment of the sums outstanding. For the purpose of meeting capital expenditure, money must not be borrowed except upon resolution of the council passed by a two-thirds majority of members present and voting thereon, without the consent of the Central Sanctioning Authority. (Sect. 62.) The Local Authorities Loans Act, 1945, also operates as in England.

**Emergency Debts.** Sect. 24 of the Act of 1929 makes special provision for the mitigation of the burden of loans (including Overdrafts) raised by Parish Councils under Sect. 2 of the Poor Law Emergency Provisions (Scotland) Act, 1921, the liability for which has now been transferred to County and Town Councils.

### III. VALUATION AND RATING IN SCOTLAND

As many of the rating terms differ in Scotland from those in use in England and Wales, it is advisable to recognize this at the outset, and the following examples are given of the English terms, with their Scottish equivalents, viz.—

Hereditaments are known as Lands and Heritages.

Valuation Lists are known as Valuation Rolls.

Rate Books are known as Assessment Rolls.

Rates, in Scottish Public Health Statutes, are called Assessments.

A further peculiarity of Scottish rating is the sharing of rates by owners and occupiers. This is dealt with later.

### VALUATION FOR RATING IN SCOTLAND

**Historical Review.** Owing to the great difficulties which accompany the general revaluation of properties, an ancient survey known as the "Old Extent," continued as the basis of all assessments until 1357. In that year a new general revaluation

Statute	Maximum Period	Sanctioning Authority (if any)	Local Authorities
Poor Law (Scotland) Acts, 1845-1888	30	—	County and Burgh Councils
Burial Grounds (Scotland) Acts, 1855-1857	20	—	County and Burgh Councils
Burgh Gas Supply (Scotland) Act, 1876	40	Secretary of State for Scotland	Borough Councils
Education (Scotland) Acts, 1872-1918	50	—	Education Authorities
Roads and Bridges (Scotland) Act, 1878	50	—	County and Burgh Councils
Public Libraries (Scotland) Act, 1887	50	—	Burgh and County Councils
Education Authorities (Technical Schools) (Scotland) Act, 1887	35	—	County and Burgh Councils
Local Government (Scotland) Acts, 1889-1908	40	Secretary of State for Scotland or Department of Health for Scotland	County and Burgh Councils
Housing (Scotland) Acts, 1890-1935	80	Department of Health	County and Burgh Councils
Burgh Police (Scotland) Acts, 1892-1903	34	—	Burgh Councils
Small Holdings Act, 1892	50	Secretary of State for Scotland	County Councils
Light Railway Act, 1896	60	—	County and Burgh Councils
Public Health (Scotland) Act, 1897	30	—	County and Burgh Councils
Burgh Sewerage, etc. (Scotland), Act, 1901	30	—	Burgh Councils
Children Act, 1908	60	Secretary of State for Scotland or Education Department	County and Burgh Councils
Unemployment (Relief Works) Act, 1920	30	Department of Health for Scotland	County and Burgh Councils
Poor Law Emergency Provisions (Scotland) Act, 1921	10-15	—	County and Burgh Councils
Electricity (Supply) Act, 1922	60	Electricity Commissioners	County and Burgh Councils
Allotments (Scotland) Act, 1922	80	—	County and Burgh Councils
Local Authority (Emergency Provisions) Act, 1923	10-15	—	Burgh Councils

was made, known as the "New Extent." In 1643 another valuation, usually called the "Valued Rent," was made, but, owing to its failure to reflect true values and incorporate new properties, the Poor Law (Scotland) (Amendment) Act, 1845, was passed, making the annual value of lands and heritages the basis for poor rates. To promote uniformity of valuation for all local purposes, the Lands Valuation (Scotland) Act, 1854, was passed. Provision was made for the appointment of assessors, the form of valuation roll was prescribed, Appeal Courts were instituted, and a new principle was introduced by the cumulo valuation of Railways and Canals, to which reference will be made later. Amending Acts have provided, *inter alia*, for Valuation Committees, rating of machinery, and the extension of Railway Assessor's powers to public utility undertakings.

Rating is now regulated by the Rating (Scotland) Act, 1926, which amended the law with respect to rating; the Rating and Valuation (Apportionment) Act, 1928; and the Local Government (Scotland) Act, 1929.

The Rating Authority as constituted by the Act of 1926 is—

- (1) The Town Council of a burgh; and
- (2) The Council of a county.

**Preparation of Valuation Rolls.** Separate rolls are compiled for each county and each large burgh. Local Assessors prepare the Valuation Roll in large burghs. Inland Revenue Officers may now be appointed local assessors and, if so, the valuation is conclusive for Imperial, as well as local, purposes, and the expense of valuation is met out of Imperial funds. The assessor also compiles the voters' lists. All heritable subjects, whether rateable or not, are included in the roll, including fixed machinery but excepting feu duties. Owners of churches receiving rents are liable to be rated. This might be to a greater extent than the rent received, which might be only for part of a year. Parish churches appear in the Valuation Roll, although they are exempt from local rating.

Prior to 15th May, schedules are issued to every owner by the assessor, to be completed and returned within 14 days. The particulars required are: the description of properties, names of tenants and occupier, rents or valuations. Failure to make the return renders the owner liable to a penalty of £20, and the penalty for making a false return is £50. From the particulars supplied and investigations made, the assessor makes the valuations and completes the roll annually on or before the 15th August. Before the 25th August the assessor must notify every person whose valuation is newly entered or altered. The assessor may amend the roll until 8th September; but, upon that day,

FOR THE BURG (OR COUNTY) OF.....

FOR THE YEAR.....

The Roll is drawn up according to Parishes. In Burghs according to Wards.



it is sent to the County or Town Clerk. The roll is then open for public inspection. Appeal Courts are held during September to hear and decide objections. Further appeal lies to the Valuation Appeal Court, consisting of three judges of the Court of Session. The roll then comes into force from the previous Whitsunday for one year. Copies are preserved at the General Register House in Edinburgh.

An amended form of the valuation roll has been necessitated by the changes introduced by the Local Government (Scotland) Act, 1929, and is given on the previous page.

**Agricultural Land and Heritages.** Distinction of these is made by placing the letter "A" against these subjects, or by use of a separate column.

**Special Rates.** The roll also distinguishes the subjects liable to assessment for these Special Districts, e.g. Drainage, Lighting, Water Supply, etc.

The Rating (Scotland) Act, 1926, made no alteration to the general law of valuation but the form of the roll was amended by the addition of columns showing the amount of the deductions from gross values and the resultant rateable values.

The Rating and Valuation (Apportionment) Act, 1928, provides that the value of subjects defined as rateable value in the 1926 Act, shall be termed the net annual value, and the latter shall be taken to be the rateable value until Parliament determines otherwise. This change of terminology is required in order to give effect to the allowances for repairs, etc., which is necessary in London and Scotland, whereas in England and Wales rateable and net values are generally the same.

**Supplementary Valuation Rolls** may be made in respect of the limited number of cases in which a domestic water rate is leviable within a county district under the Public Health (Scotland) Amendment Act, 1891, in respect of agricultural subjects. If Town Councils so resolve before 1st January in each year, the Assessor shall make up between 1st January and 1st March, a Supplementary Valuation Roll showing the valuation of all land and heritages that have come into existence since the yearly Roll was completed. (Burgh Police (Scotland) Act, 1903.)

**The Local Government (Scotland) Act, 1929.** Rating relief is provided by Part II of this Act to agriculture, productive industry and freight transport by provisions for reduced rateable values. Subjects, in so far as they are used for the purposes defined, are to be distinguished in the valuation roll. The new net annual values of agricultural land and heritages, for owners' and occupiers' rates, for the year beginning 16 May, 1929, were the gross values reduced by 92 per cent. For each year thereafter

the gross value will be reduced by  $87\frac{1}{2}$  per cent, subject to any rounding off adjustments necessary in consequence of Sect. 12 (7) of the 1926 Act, or Sect. 45 of the Burgh Police (Scotland) Act, 1903, or any corresponding provisions of any local Acts. Under Sect. 44 (2) of the Act of 1929, the net annual value is to be the gross value less any such adjustments. The whole subject is not entirely de-rated, as in England and Wales, because farms are valued as a unit "over the border," land, buildings and cottages together. To avoid the entire direct revaluation and apportionment of values of these properties a percentage of the gross value is retained to represent the value of properties not falling for derating.

**Rateable Values of Industrial and Freight Transport Lands and Heritages.** Under Sects. 45 and 50 of the Act of 1929, the rateable values of industrial or freight transport lands and heritages, so far as occupied and used or treated as occupied, and used for industrial and freight transport purposes, were, in the case of the year beginning on the 16th May, 1929, eight-fifteenths, and shall be in the case of subsequent years, one-fourth of the net annual value subject to any rounding-off adjustments, as described above.

**Rating and Valuation (Apportionment) Act, 1928.** This Act applies to Scotland as to England (see Chapter XXVIII) with certain modifications. Under the Act of 1928, industrial lands and heritages are defined in Sect. 3 (1) as including, subject to certain limiting provisions, lands and heritages occupied and used as a factory or workshop within the meaning of the Factory and Workshops Acts. Questions have arisen as to whether premises could be regarded as a factory or workshop where the only person working therein was the owner or occupier.

To make clear that such subject will get the benefit of de-rating, Sect. 46 (1) of the Act of 1929 provides that lands and heritages shall not be deemed not to be occupied and used as a factory or workshop by reason only of the fact that the owner or occupier of the subjects is the only person working therein, or that no other person working therein is in his employment.

Under Sect. 46 (2) of the Act of 1929, the following subjects are to be treated as industrial lands and heritages occupied and used wholly for industrial purposes—

- (a) Salmon fishings, so far as the right thereto is exercised by net or cruive, where such right of fishing by net or cruive is regularly exercised throughout that part of the year during which that method of fishing is permitted by law, and where no revenue is derived by the owner and occupier from any other method of fishing in the said part of the year; and

(b) Minerals which are let notwithstanding that they are not being worked at the time.

Under Sect. 9 (12) of the Act of 1928 minerals that are being worked are to be treated as occupied as a mine, and are therefore within the definition of industrial lands and heritages.

Accordingly, all minerals entered in the valuation roll will now be treated as industrial lands and heritages.

**New Provisions as to Valuation Roll.** Sect. 49 of the Act of 1929 contains several provisions relating to the valuation roll. Sect. 49 (1) amends Sect. 14 (1) of the Act of 1926, by requiring that the valuation roll shall show the net annual value as well as the rateable value of subjects, but it need no longer show the amount of any deduction from the gross value for the purposes of ascertaining the net annual value.

**District Councils and the Valuation Roll.** Sect. 25 of the Act of 1929 provides for the County Council, in accordance with a scheme approved by the Secretary of State, to divide the county into districts for each of which a District Council will be elected to perform certain local functions.

A separate rate will be leviable in respect of the expenses of the District Council, and accordingly Sect. 49 (3) provides for the assessor distinguishing in the valuation roll subjects situated within each such district.

The District Councils came into being in May, 1930. Accordingly Sect. 49 (3) applied to the valuation roll for 1929-30.

**Principles of Valuation in Scotland.** The primary basis of valuation is the actual rent payable. It is to be noted, however, that this is not binding on the assessor who may, and in practice does, challenge the *bona fides* of any lease. The following exceptions to the rule prevail, viz.—

(a) Where a “grassum” is payable, i.e. some other consideration than rent, including premiums and fines, these being added to the annual rental.

(b) In cases of leases for more than 21 years (Minerals, 31). Under the 1854 Act the rent stipulated in the lease was to be the annual value for rating, and improvements during the currency of the lease were not added. The Lands Valuation (Scotland) Act, 1895, provided for the separate entry in the roll of such increases in values, with the *tenant* as proprietor, except in the case of (1) agricultural subjects; (2) minerals with stipulated rentals; (3) structures for the treatment of minerals.

(c) Where there is no rent payable, as in the case of Public Buildings and Public Utility Undertakings, and of houses occupied by the owner. In such cases the following methods are adopted, viz.—

1. By comparison with similar properties.
2. On the "contractor's principle," i.e. a percentage on structural cost, varying from 1 per cent to 5 per cent.
3. On a fixed unit of accommodation, e.g. hospital beds.
4. On the "profits principle," i.e. on the earning capacity of the subject, e.g. public utility undertakings, such as gasworks.

**The Assessor of Railways and Canals.** As already stated, this official originated with the Lands Valuation Act, 1854. He is popularly called the Railways Assessor, although, as detailed later, his duties extend to many other undertakings. His duties have been extended and further regulated by Acts passed in 1867, 1887, and 1894. He is a national official, appointed by the Secretary of State for Scotland, who also fixes his salary and those of the members of his staff. The system is peculiar to Scottish legislation, although it has been adopted for railways in England and Wales of recent years, by negotiation and agreement and without statutory authority. The grouping of railways under the Railways Act, 1921, has made it advisable to standardize procedure for both countries, and the Railways (Valuation for Rating) Act, 1930, was passed accordingly. The Railway Assessor compiles a separate roll for each undertaking, showing the total or "cumulo" value of the whole undertaking, the names of the various rating areas through which it runs, the length of lines and value of stations and other buildings, and the apportionment between each area. The cumulo value is ascertained on the "profits" principle. One half of the expenditure on permanent way maintenance is first deducted from the total value as an allowance. There is then deducted 5 per cent to represent the cost of values other than lines, and the result is taken as the value of lines. This is apportioned among the various areas as the value of lines in the area, and 5 per cent thereon is added back as the value of buildings. This gives the net annual value for the area. These values must be fixed before the 15th March. Appeals lie to the Lord Ordinary on the Bills—the Junior Judge of the Court of Session—or, where the undertaking is wholly within one county, to the Sheriff—the County Court Judge. The decision of the Sheriff or the Lord Ordinary, as the case may be, is final. There is a liaison between the Railway Assessor and the Local Assessor, and all values as ascertained appear in the local valuation roll.

These provisions not only apply to railways and canals, but may be applied to any public utility undertaking extending into two or more rating areas, such as tramways, gasworks, waterworks, and electricity undertakings. Petition therefor must be made to the Sheriff prior to the 15th November in any year.

## LEVY AND COLLECTION OF RATES

**Owners' and Occupiers' Rates.** Whereas, with the exception of the provisions of Sect. 11 of the Rating and Valuation Act, 1925, only occupiers pay rates in England and Wales, there are provisions in Scotland for the sharing of rates by owners and occupiers, usually in equal proportions.

**County Rates.** Prior to the passing of the Local Government (Scotland) Act, 1889, county rates for most purposes were payable entirely by owners. Provision was then made for sharing between owners and occupiers on the following basis. Owners were first to pay the amount of the average rates levied during the previous ten years. Any increases thereon were to be shared equally. Rates in the £ are the same, but owing to the payment of rates on void properties by owners only, their total is greater.

County rates include the following purposes, viz.: Public Health, Highways, General Purposes. Special county rates include Drainage, Lighting, Scavenging, Water Supply.

**Burgh Rates.** Methods have differed in the past with the various rates levied. The larger burghs have special provisions under their Local Acts. The Burgh General Rate was payable by occupiers only. Burgh general purposes include: Baths and Wash-houses, Cleansing, Public Lavatories, Dean of Guilds Court, Fire Protection, Gas Testing, Lighting, Markets, Slaughter-houses, Recreation, Watching.

Some rates in burghs were shared equally, e.g. General Improvement, Public Health, Roads and Bridges, Sewerage. Others are levied on owners and occupiers according to the benefit each receives. For example, in some burghs the water rate is paid by occupiers while the drainage rate is paid by the owners.

**Parish Rates.** These were levied equally on owners and occupiers, but, as the total amount to be raised was divided, rates in the £ differed. Prior to the Rating (Scotland) Act, 1926, the Parish Councils had power to charge rates differentially by classifying properties for occupiers' rates. The expenses of the Education Authority were also formerly collected by the Parish Council together with the poor rates.

**The Rating (Scotland) Act, 1926.** Under the provisions of this statute, rates in Scotland were standardized and consolidated. County and Burgh Councils were made the only rating authorities, and all other spending authorities precept these councils for their requirements before 15th July each year. As this reform substituted 234 rating authorities for the existing 1,108 (viz. 33 counties, 201 burghs, 874 parishes), considerable economy has been effected by the lessened cost of valuation and joint rate

collection. Amounts falling for collection by two authorities are apportioned on the basis of rateable value.

Classification for parish rates was abolished and all forms of differential rating. Existing reliefs and allowances were preserved, however, by providing a Scale of Deductions from gross values to arrive at the rateable values, ranging from 5 per cent to 75 per cent (First Schedule). Houses and shops do not benefit by these deductions. Other and local privileges have been preserved by Order of the Secretary for Scotland.

Rates and Precepts are now raised in like manner and together with the Public Health Assessment. Owners and occupiers thus generally share rates equally, subject to the provisions outlined above. One rate only is levied and collected in each area. Even where a County Council requires the Watching Expenses in a burgh, the amount is included and collected by the Burgh Council under precept of the County Council.

**The Consolidated Rate.** Sect. 19 of the Act of 1929 provides that all rates leviable by a rating authority throughout its entire area, whether under the provisions of a public general Act or of a local Act, shall be levied and recovered as one rate to be known as the consolidated rate of the area of such rating authority. Such consolidated rate shall be divided between owners and occupiers in such proportions as the total amount would have been divided between them had the rates been separately levied.

**The Burgh Fund.** The total moneys raised by the consolidated rate, and all other revenues receivable by the rating authority, shall be paid in the case of a burgh into a fund to be called "The Burgh Fund," and the expenditure of the Town Council payable out of the rates for each branch of expenditure shall be defrayed out of that fund.

Every demand note in respect of the consolidated rate shall show the amount of the expenditure under each of the branches prescribed by the Secretary of State, which is being defrayed out of the said rate and grants under Part III of the Act of 1929.

**Contributions by Burghs to County Councils.** The County Council annually, and not later than the 15th July each year, shall cause a requisition to be sent to the Town Council of each burgh included within the county for any purpose, requiring them to pay the sum apportioned and allotted to the burgh. The Town Council shall at such intervals, and by such instalments as they and the County Council may agree, or, failing agreement, as the Secretary of State may determine, pay over to the County Council the sum so requisitioned without any deduction whatever, so, however, that the last instalment shall be payable not later than the 1st of May.

**Compounding Provisions.** Rates are levied on and collected from owners instead of occupiers under the following provisions, viz.—

1. House Letting and Rating (Scotland) Act, 1911. This Act is compulsory upon burghs with a population of 10,000 and upwards, and is adoptive by others. It provides for the collection from owners under the following conditions, viz.—

For dwelling houses rented at £10 and under, if the population is under 20,000.

For dwelling houses rented at £15 and under, if the population is over 20,000 but under 50,000.

For dwelling houses rented at £21 and under, if the population is 50,000 and upwards.

These values are subject to the increases under the Rents Acts. Owners were formerly allowed a commission of  $2\frac{1}{2}$  per cent on occupiers' rates only. The Local Government (Scotland) Act, 1929, increases this allowance to an amount not over 5 per cent. The amount is, failing agreement, determined by the Sheriff.

2. Where the Act of 1911 is not in operation in a burgh, the Council may rate the owners of lands and premises let at £4 and under and allow a rebate of 10 per cent.

3. Where subjects are let for less than a year the owner may be rated and allowed  $2\frac{1}{2}$  per cent. This, again, applies only where the 1911 Act is inoperative, but extends to counties also. (Rating (Scotland) Act, 1926, Sect. 17.)

**Agricultural Properties.** Every occupier of agricultural lands and heritages occupying under a lease entered into prior to 1st June, 1928, is authorized by the Act of 1929 to recoup himself after payment of rates by deduction from rent of an amount equal to the rates paid by the owner for the year commencing 16th May, 1930, multiplied by  $2\frac{1}{2}$ .

**Industrial and Freight Transport Properties.** Occupiers of these premises, as defined in the Act of 1929, are authorized to recoup themselves by deducting from the rent the amount of the owner's rates multiplied by 3.

#### IV. FINANCIAL ADMINISTRATION AND AUDITS

The system of accountancy in operation in Scotland differs from the English method. There is greater central control and more minute prescription of procedure.

On the other hand, there is one outstanding instance of greater freedom in the case of the Common Good of Scottish Burghs as described below. The Government control is not in respect of the method of book-keeping itself, but, in the case of all local authorities, detailed Financial Statements are prescribed, and the system of accountancy must lend itself to the compilation



of the annual statements. All such Statements are made up to Whitsun-Day (15th May). A notable feature is the "receipts and payments" basis. Accounts kept on this basis do not lead to a proper Balance Sheet, although a "Statement of Assets and Liabilities" is required. The respective Government Departments have laid down rules for the valuation of assets.

In the case of parishes, distinction is required between heritable and movable property (roughly real and personal property). The Valuation Roll shows only annual value of heritable property, but not its capital value.

For BURGHs a more detailed analysis has been required in addition to that of heritable and movable property, viz.

1. Unrealizable (e.g. Sewers) at cost, less provision for repayment thereof by annual instalments.

2. Medium (e.g. Public Buildings) at cost, less depreciation.

3. Saleable (e.g. Stores) at market value.

Statements of Assets and Liabilities are also analysed among the various funds of the local authority. To lead up to the Financial Statements separate accounts have to be kept of each assessment (as rates are called), and revenue and capital items distinguished in each account.

The accounts of all local authorities in Scotland are audited by persons appointed by the responsible Government Department, professional accountants being appointed. Auditors have no powers of disallowance and surcharge as possessed by District Auditors in England and Wales. The Secretary of State for Scotland has this power, however, in the case of County Council, and Education Authorities' Accounts, and, since the Act of 1929, in the case of Town Councils. The accounts of Education Committees were audited by the Accountant to the Scottish Education Department, who was a Government official. The audit of Education Accounts is now done by County Auditors. On the 1st January in each year the education accounts, made up to the preceding Whitsun-Day, with the necessary vouchers, must be sent to the Accountant for audit. He has no power of surcharge, but reports to the Education Committee and makes an Annual Return to Parliament.

Town Councils have had a model form of accounts prescribed by the Secretary for Scotland under powers granted by the Town Councils (Scotland) Act, 1900. The five major towns (Edinburgh, Glasgow, Dundee, Aberdeen, Greenock) are regulated by Local Acts, and are therefore exempt from the general regulations.

A peculiarity of the accounts of some of the Royal Burghs of Scotland is the "Common Good." It consists of lands and gifts to the Burgh by the King when the Burgh obtained its Royal Charters



and subsequently. Those Burghs which retained their lands or a large portion of them have a considerable asset. Many sold or feued their lands and now have only the feu-duties. A "Common Good" is not a General Reserve. It is illegal to put the proceeds of any assessment to the "Common Good," but any lands or money *gifted* to the Burgh might form a Common Good. The income from assets belonging to the Common Good, consisting of rents of land and buildings, fishing rights, privilege rents, feu duties, Customs and other dues, are not restricted as rate funds are, but may be devoted to any lawful purpose for the good of the inhabitants the Burgh Council deems fit.

Expenditure which could not legally be defrayed out of rates may thus be met, and loans may be raised upon security of the Common Good without the restrictions which otherwise apply. In some Burghs which have power to pledge the rates as security for Common Good borrowings, the amount which may be borrowed on the security of the Common Good is fixed, and cannot be exceeded without sanction. The estimate and the expenditure are restricted to purposes permitted by law.

The remedies of Auditors and others to prevent illegal payments are described below. Any surplus from one rate must be included in the next estimate.

In the case of *Kemp v. Glasgow Corporation*, [1920] A.C. 836, however, the pursuer, who was an elector, objected to the payment, out of the Common Good, of election expenses of candidates favouring city extension, and the House of Lords decided that such payments, being against public policy, were illegal.

The Common Good accounts are kept separately, and to meet the standardized form must be divided into—

1. Revenue Account.
2. Capital Account.
3. Loans Accounts on security of Common Good.
4. Sinking Fund Account.
5. Balance Sheet.

In the case of English Boroughs the rate collection accounts are merged into the District Fund or Borough Fund, but the assessment accounts of Scottish Burghs are not merged into the Common Good, but both are kept quite distinct. For each assessment raised there must be kept separate Revenue, Capital, and Loans Accounts and Balance Sheets.

The principal assessment is the Burgh General, which includes Police, Cleansing, Lighting, Fire Prevention, Markets, Slaughter-houses, Baths, Weights and Measures, and other expenditure.

Other assessments (all separately accounted) are—Burgh Sewerage, Diseases of Animals, General Improvement, Parks,

Public Health, Public Assistance, Mental Treatment, Registration, Roads, Sheriff Court Houses, Valuation of Lands, Water Supply, Burial Grounds. Housing is met by Public Health Rate.

General charges have to be apportioned over all accounts which are kept separately. The separation of accounts does not necessitate separate sets of books, the object being attained by Tabulated Cash Books and Ledgers. The accounts of trading undertakings and Housing are kept on Income and Expenditure basis.

Burgh accounts must be made up to 15th May, and submitted to the Auditor appointed by the Secretary for Scotland as soon as possible after that date. Under the Act of 1929, the procedure at the Audit of Burghal accounts is made similar to that of the Accounts of the County Council, as described in the next paragraph. The audited accounts with the Auditor's Report must be laid before the Council not later than September. The Auditor fixes the date of audit and notifies the Town Clerk, who publishes fourteen days' notice in a local newspaper. The accounts must be deposited for public inspection, and ratepayers may object and attend the audit to support objections by giving two days' notice to the Auditor and the burgh official concerned. The powers of the Auditor are similar to those detailed in the next paragraphs for County Councils.

County Councils make up their accounts to 15th May. The Secretary for Scotland has prescribed a form of abstract of accounts on a receipts and payments basis. Separate accounts must be kept of each assessment, and many of these must be so recorded as to show receipts and payments for each District Committee as described below.

The principal assessments are: County General, including Sheriff's Court, Food and Drugs, Weights and Measures; General Purposes, including Children's Acts; Small Holdings; Mental Hospitals; Public Health; Local Welfare; Police; Valuations; Burial Grounds; Education.

Revenue and Capital items must also be distinguished. The abstract may be compiled by merely keeping Cash Accounts carefully analysed over the various districts and allocated between the different funds. Ledgers are, however, necessary for the purpose.

An Aggregate Capital Account is required, also a Government Grants Account and Sinking Fund Accounts. Separate accounts must be kept for Special District Expenses, including Drainage, Lighting, Police, Public Health, Roads, Scavenging, Water Supply.

All receipts and payments go through the County Fund in the first instance, excepting for Roads, Public Health, and Special Expenses.

The accounts are audited by an Auditor appointed by the Secretary of State for Scotland whose approval is required to the salary paid him by the County Council. There is no qualification except a "fit person," but professional accountants are usually appointed. The Auditor fixes the date of audit and notifies the County Clerk, who publishes fourteen days' notice in a local newspaper. The accounts must be deposited for public inspection, and ratepayers may object and attend to support objections by giving two days' notice to the Auditor and county official concerned. The Auditor has powers similar to those of District Auditors as to production of books and documents, attendance of officers and declarations of correctness, but he has no power of surcharge or disallowance. He must make an interim report to the Secretary of State for Scotland on any irregularities, together with his views thereon. The Secretary of State notifies the persons concerned, and after inquiry decides disallowances and surcharges. Certified sums must be paid within fourteen days or the Auditor must take proceedings to enforce payment. Within fourteen days of the completion of audit, the Auditor reports to the Secretary of State and sends duplicate abstracts to him and to the County Clerk. The County Clerk must publish a summary of the abstract in the prescribed form in a local newspaper.

The County District Committees precepted the County Council for their funds and had no rating or borrowing powers, but they kept their own accounts, which were controlled and audited in the same manner as the county accounts. Since the 15th May, 1930, the organization of County Councils has been changed, and District Councils substituted for District Committees. The Commissioners of Supply also disappeared as previously explained.

## ACCOUNTS OF EDUCATION AUTHORITIES

Education accounting is regulated by the Education (Scotland) Act, 1918, Sect. 23.

Pursuant to this Act a form of Financial Statement has been prescribed, and this forms the basis of account-keeping methods.

**Period of Accounts.** Accounts have to be made up annually to Whitsun-Day upon a Receipts and Payments basis, and transmitted on the following 1st January to the Scottish Education Department for audit.

**Distinctive Features of the Accounts.** The distinctive features of the accounts of Scottish Education Authorities may be said to be that the accounts are kept upon the "receipts and payments" basis, and that separate accounts are kept for various funds, viz. General Fund, Building Fund, Sinking Fund, Teachers'

Superannuation Fund and Trust Accounts. The Superannuation (Scotland) Act, 1937, which came into force on 16th May, 1939, provides that all Local Authority employees are now compulsorily superannuated.

Under the Act of 1929 the functions of Education Authorities were, from and after the 16th May, 1930, transferred to County Councils. County accounts now include Education, but the large cities, Glasgow, Edinburgh, Dundee and Aberdeen, have their own Education Authority.

## AUDIT OF ACCOUNTS

The audit of the accounts of County Councils, Town Councils, and District Councils is provided for by the Local Government (Scotland) Act, 1929, Sects. 15 and 26, and the Third Schedule, and may be summarized as follows—

1. The provisions shall have effect with respect to the audit of every County Council and Town Council for the year beginning on the 16th May, 1930, and for every subsequent year.

2. In the case of a council whose financial year begins on a day other than the 16th May, the provisions shall have effect with the substitution of that other day for the 16th May.

3. For the purpose of making up, balancing, and audit of the accounts for the year ended on the 15th May, 1930, of District Boards of Control, Education Authorities, Parish Councils, the statutory provisions relating to the accounts and the audit of accounts of the said boards, authorities, and councils shall have effect subject to such necessary modifications as the Central Department may by Order prescribe.

4. The Secretary of State for Scotland shall from time to time, and for such period as he may determine, appoint one or more fit persons to audit the accounts. Intimation of the appointment of the Auditor shall be given to the council concerned and to the Auditor prior to the commencement of his term of office.

5. The local authority shall pay to the Auditor such salary and allowances as shall from time to time be fixed by the council, subject to the approval of the Secretary of State.

6. The Secretary of State may make regulations either generally or in the case of any particular council as to the manner in which the audit of the accounts of a council shall be conducted.

7. The local authority shall make available for inspection by the Auditors all books and documents which he may consider necessary, and shall give the Auditors every reasonable facility for carrying out the audit. The Auditor, on giving not less than seven days' previous notice in writing, may require any person holding any books or documents or accountable therefor, to

appear before him and to produce the same and to make and sign a declaration as to the correctness or identity of the same.

8. Before each audit is completed the Clerk to the local authority shall, after receiving from the Auditor intimation of the time and place hereinafter mentioned, give at least fourteen days' public notice in such manner as the Secretary of State may prescribe—

- (a) of the deposit of the abstract of accounts;
- (b) of the time and place at which the Auditor will attend for the purpose of receiving objections with respect to the accounts; and
- (c) of the name and address of the Auditor.

9. An abstract in duplicate of the accounts duly made up and balanced and signed shall be deposited in the office of the local authority, and be open to the inspection of all ratepayers within the area for seven clear days before the date notified as aforesaid. All such persons shall be at liberty to take copies of or extracts from the same without any fee.

10. Any ratepayer may make any objection to such accounts or any part thereof, and shall transmit the same and the grounds thereof in writing to the Auditor, and a copy thereof to the officer concerned and to the Clerk to the local authority, two clear days before the time notified as aforesaid.

11. If it shall appear to any Auditor that any payment is, in his opinion, contrary to law and should be disallowed, or that any sum that in his opinion ought to have been is not brought into account by any person, he shall by an Interim Report to the Secretary of State set forth the grounds of his opinion as aforesaid. The Secretary of State shall cause such Interim Report to be intimated to the objector, if any, to the officer or other person affected thereby, and to the council concerned.

He shall consider any statement in writing which may be made to him by, or on behalf of, any party concerned; and, after such further inquiry as he may think fit, the Secretary of State shall decide all questions raised by such Interim Report. He shall disallow all illegal payments or any loss or deficiency, due to failure, to bring a sum into account upon any person, or persons, by whose negligence or wrongful act that payment has been made or authorized, or that loss or deficiency has been incurred.

12. The Secretary of State has power in certain circumstances to abstain from making a disallowance or surcharge.

13. Every sum determined to be due from any person shall be paid by such person within fourteen days after such determination has been intimated to him.

14. Within fourteen days of the completion of the audit, or after any question raised under an Interim Report has been determined, the Auditor shall report on the accounts audited and shall certify on each duplicate abstract thereof the amount of the expenditure so audited and allowed. He shall forthwith send one duplicate abstract of the accounts to the council and the other duplicate abstract to the Secretary of State. The Auditor shall also send to the Accountant of the Scottish Education Department a copy of the abstract of the accounts relating to education with a report and certificate thereon.

15. The council shall cause the certified duplicate abstract of accounts sent to them to be deposited in their office for at least fourteen clear days, and a notice to be published once weekly for at least two successive weeks in one or more of the newspapers published or circulating in the area of the time and place during which the said abstract shall be open to the inspection of all ratepayers within the area.

16. The Secretary of State may require the council to cause such public notice as he may direct to be given of any surcharge or report made by the Auditor, and in default of such publication the Secretary of State may cause such notice to be given at the cost of the local authority.

17. Modifications of the foregoing regulations are made relating to the accounts for education of a County Council or of a Town Council of a burgh being a county of a city.

## CHAPTER XXXIII

### NORTHERN IRELAND

#### THE GOVERNMENT OF IRELAND ACT, 1920

THIS Act received the Royal Assent on the 23rd December, 1920. It is an Act to provide for the better Government of Ireland. It provided for the establishment of Parliaments of Southern and Northern Ireland. On and after the appointed day there was to be established for Southern Ireland a Parliament to be called the Parliament of Southern Ireland, consisting of His Majesty, the Senate of Southern Ireland, and the House of Commons of Southern Ireland. For Northern Ireland there was to be established a Parliament to be called the Parliament of Northern Ireland, consisting of His Majesty, the Senate of Northern Ireland, and the House of Commons of Northern Ireland. For the purpose of this Act Northern Ireland consists of the Parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone, and the Parliamentary boroughs of Belfast and Londonderry, and Southern Ireland consists of so much of Ireland as is not comprised within the said Parliamentary counties and boroughs.

The scheme embodied in the Act was accepted by the Ulster Unionists, and the Northern Parliament was elected in May, 1921, the Government of which was constituted with a Prime Minister, Minister of Finance, Minister of Home Affairs, Minister of Labour, Minister of Education, Minister of Agriculture, and Minister of Commerce. Each Minister, except the Ministers of Agriculture and Commerce, has a Parliamentary Secretary. Sect. 8 of the Act provides for the exercise of Irish Services through such Departments as may be established by Acts of the Parliaments of Southern Ireland and Northern Ireland respectively. Sect. 61 provided that all existing laws, institutions, and authorities in Ireland, whether judicial, administrative, or ministerial, and existing taxes in Ireland, shall, except as otherwise provided by the Act, continue as if the Act had not passed. Outside Northern Ireland the Act was not worked. On 6th December, 1921, a treaty between Great Britain and Ireland, which was subsequently embodied in the Irish Free State (Agreement) Act, 1922, was signed.

#### THE IRISH FREE STATE (AGREEMENT) ACT, 1922

The articles of agreement for a treaty were given the force of law as from 31st March, 1922. Ireland was to be called the

Irish Free State and to have the constitutional status of the self-governing Dominions; its position in relation to the Imperial Parliament and Government to be that of the Dominion of Canada, subject to the following conditions—

1. The oath to be taken by Members of Parliament to be in the form set out in the treaty.

2. The Free State to contribute towards the National Debt and the cost of war pensions; and to compensate public servants displaced through change of Government.

3. Imperial forces to undertake Irish coast defences for at least five years, and to receive certain facilities at specified ports.

4. Any Irish military defence force to be limited in numbers proportionately to the like force in Great Britain.

5. Northern Ireland to have the option of contracting out of the Free State, in which case boundaries as between the two spheres of government should be defined by a commission; but should Northern Ireland decide to remain in the Free State, her existing boundaries and powers of government were to be retained, all other powers of government in Northern Ireland to be exercised, under certain safeguards, by the Free State Government.

6. No religion to be endowed or adversely interfered with by either Irish Parliament.

7. The treaty of agreement to be ratified by legislation on approval by the Imperial Parliament and by a meeting of the members of the Southern Irish House of Commons.

On the 14th December, 1921, the King opened an Irish Session of Parliament; on the 16th both Houses voted the address approving the Treaty, and the Act received the Royal Assent on the 31st March, 1922. Following the passing of this Act, Northern Ireland took steps immediately to contract out of the Free State, and in due course a Boundary Commission was established with the object of delimiting the boundaries between Northern Ireland and the Irish Free State. The Commission sat for some considerable time, and carefully weighed up the situation on both sides of the existing Border.

Eventually, in 1925, as a result of agreement between the various Governments concerned, it was decided to make no change in the existing boundary lines, and the Free State was relieved of liability for the services of the National Debt and the payment of War Pensions. This agreement was duly ratified by the Imperial and Free State Parliaments.

The Constitution of the Free State was passed by Dail Eireann, sitting as a Constituent Assembly in a Provisional Parliament, on the 25th October, 1922, and by the British Parliament on



the 5th December, 1922. On the following day His Excellency Timothy M. Healy, K.C., was sworn in as Governor-General, and, all the necessary formalities having been complied with, the Irish Free State came legally and actually into existence. Mr. W. T. Cosgrave was appointed President of the Executive Council, and formed the following Ministry, with himself as Minister for Finance: Vice-President and Minister of Home Affairs, Local Government, Education, Defence, Industry and Commerce, External Affairs, Agriculture, Postmaster-General, and Minister of Fisheries. The first six Ministers, with the President, formed the Executive Council, or inner Cabinet, all of whom were required to be members of Dail Eireann, and to take collective responsibility for all matters concerning the State departments administered by them. The remaining three Ministers were nominated by Dail Eireann, to which they are individually responsible, their term of office being the term of Dail Eireann existing at the time of their appointment. In the present Government all Ministers are members of the Executive Council.

Prior to the treaty of 1921 the Local Government system in Ireland was very similar to that of England. The only material differences were the absence of Parish Councils, the financial dependence of the minor authorities on the County Councils, and the centrally controlled police force. But the system was of comparatively modern growth and had no historic roots in Irish national life. The Municipal Corporations Act, 1840, marks the beginning of real Local Government in Ireland. This Act swept away the old corrupt Town Corporations and transferred the control of municipal affairs in the towns from small self-elected cliques to the general body of the urban inhabitants. This was followed by the Towns Improvement Act, 1854. The Public Health Acts, which were consolidated and amended by an Act passed in 1878 and extended by subsequent statutes down to 1918, also conferred considerable powers upon urban authorities. These Acts dealt mainly with sanitary matters. They also enabled the Central Authority to constitute municipal towns as the urban sanitary districts. Other laws in quick succession extended and improved the machinery of municipal life. Finally, the Local Government Act, 1898, set up a complete system of Local Government on democratic lines for the whole country. The Local Government Act, 1898, established in every administrative county a County Council consisting of a chairman and councillors. To that body was transferred the fiscal powers formerly exercised by the Grand Jury, and, in addition, the administration of the Diseases of Animals Act, the Act relating

to Technical Education, and the management of asylums for the insane poor.

As regards county administration it established four spending authorities; the County Council, the Boards of Guardians, originally established under the Poor Relief Act, 1838; the Rural District Councils, and the asylum committees. But there was only one rating authority, the County Council; and, although in practice 85 per cent of the expenditure was incurred by the other three authorities, the County Council had no power to veto their expenditure.

#### NORTHERN IRELAND

For purposes of Local Government, Northern Ireland consists of six administrative counties, viz. the counties of Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone; also two County Boroughs, viz. Belfast and Londonderry, five Boroughs, viz. Bangor, Newtownards, Coleraine, Ballymena, and Larne, twenty-eight urban districts, three municipal towns, and thirty-two rural districts. The local administration throughout the whole area is carried on by means of a system of popularly elected councils.

#### POWERS AND DUTIES OF COUNCILS

Chief among these councils are the County Councils. To the County Council is entrusted the management of the administrative and financial business of the county. The County Council is responsible for making, levying, collecting, and recovering the poor rate in so much of the county as is not comprised in a county borough or an urban district. It is responsible for the provision of accommodation for and maintenance of rate-aided persons of unsound mind in the county. It is required to contribute to the maintenance of the county infirmaries and fever hospitals, and it is responsible for the construction and maintenance of roads and other public works.

County Borough Councils exercise the same powers and perform the same duties as the County Councils, and also those of Urban District Councils, and are entirely independent of the County Councils.

Borough Councils exercise the same powers and perform the same duties as Urban District Councils, and, in addition, have further powers and privileges vested in them under the Municipal Corporations Act, 1840.

Urban District Councils have been established in the majority of the towns in Northern Ireland. The Urban District Council is the sole rating authority within the urban district, and pays

to the County Council upon demand the amount apportioned to the district for the county at large, union and district charges, and any urban charge leviable off an urban district. These councils are road and sanitary authorities within their own area, and are responsible, *inter alia*, for the cleaning and lighting of their towns. In the case of Municipal Towns, constituted under the Towns Improvement (Ireland) Act, 1854, the administrative body consists of popularly elected commissioners. Town Commissioners have certain limited powers in regard to Public Health and other services and their rating powers extend to Town Rate only. They are not road or sanitary authorities, the town being, for these purposes and for the purpose of Poor Rate, part of the surrounding rural district.

Rural District Councils have no power of levying rates. The money required to meet the expenses of a Rural District Council is supplied by the County Council upon demand and recovered by that council from the rural district through the medium of an appropriate Poor Rate. These councils are the sanitary authorities in their respective districts, and they are also responsible, *inter alia*, for such matters as provision of labourers' cottages and burial boards. They have, moreover, certain powers in regard to the formulation of proposals for the construction and maintenance of roads.

The administration of poor relief and dispensary medical relief is vested in the Boards of Guardians, composed of the rural district councillors, together with representatives of electoral divisions of any urban district comprised in the poor law union. In a few cases the poor law union extends over two rural districts. Their functions are confined to the administration of the poor law; vaccinations; registrations of births, marriages, and deaths; medical relief, and boarding-out of children. The expenses of Boards of Guardians are, as in the case of rural districts, met by contributions from County and Urban funds, recovered from the Union through the medium of Poor Rate levied by the appropriate rating authorities.

Under Part II of the Unemployment Act, 1934, the administration of assistance for the majority of the able-bodied poor has been transferred to the Unemployment Assistance Board.

## GRANTS IN AID

As in Great Britain, the Government of Northern Ireland makes substantial grants in aid of expenditure on Local Government services, the most important being the grants made in compensation for the loss of revenue to local authorities arising out of the Local Government (Rating and Finance) Act, 1929,

under which agricultural lands are exempt from all rates, industrial and freight transport hereditaments from three-fourths rates, and fisheries from three-fifths rates, and the grants for road purposes.

Under the former head the total payments in respect of the year ending 31st of March, 1937, amounted to £1,012,030, while in connection with affording relief for the construction and maintenance of roads, the grants amount to approximately £500,000 annually.

The roads in Northern Ireland are classified on almost the same principles as in Great Britain, and the grants payable to the local authorities are based on prescribed percentages of the expenditure on each of the various classes of roads.

In addition to the above fundamental grants and the grants for housing purposes already referred to, the Government of Northern Ireland also make substantial grants in relief of expenditure incurred by local authorities on the treatment of tuberculosis and special diseases, on the Welfare of the Blind, Child Welfare, Maintenance of rate-aided patients of unsound mind, and in regard to Poor Relief and Public Health Services generally.

### IMPORTANT LEGISLATION

The following is a brief summary of the more important legislation dealing with Local Government passed by the Parliament of Northern Ireland since its establishment to the end of 1945, classified according to the subject—

1. **Drainage.** The machinery for dealing with the problem of arterial and agricultural drainage was simplified by the Drainage Act, 1925, which established a Central Drainage Advisory Committee for the whole province, and conferred considerable powers in respect of drainage upon the County Councils, to which the functions of a number of former drainage authorities were transferred. The Drainage Act, 1929, simplified the procedure in carrying out minor schemes. Acts in 1931 and 1933 empowered urban authorities to contribute towards the cost of drainage schemes and amended the administrative procedure in connection with the maintenance of water-courses by occupiers of agricultural land. A further Act in 1935 provided for the Amendment of Drainage Schemes, even after confirmation, by Order made by the Ministry of Home Affairs at the request of a County Council.

2. **Education.** Educational reform was dealt with in a very comprehensive manner by the Education Act passed by the Northern Ireland Parliament in 1923. Under this Act the

councils of county boroughs and the County Councils were given wide powers as local education authorities, their powers being exercised in the main through County Borough and Regional Education Committees. The duties of these committees include the administration of schemes for school medical services, afflicted children, school attendance and scholarships to secondary and technical schools, universities and other higher institutions in addition to the provision of school accommodation and the control of schools provided by or transferred to them. The authorities were given powers to assist voluntary schools by grants under certain conditions and substantial grants are paid from Parliamentary sources in aid of the expenses of the authorities, the remainder being raised by an education rate. A later Act, passed in 1930, amended the provisions for the local management of the transferred and provided elementary institutions and the procedure in appointing teachers in these schools; the Ministry of Education were also given power to make direct grants for the provision or improvement of voluntary public elementary schools.

3. **Housing.** The Housing Act, 1923, provided for grants being paid by the Government and local authorities in respect of houses erected in compliance with certain specified conditions. The size of the house eligible for grant and the amount of the grant have been varied from time to time.

Under the Act of 1923 as amended, local authorities are also empowered to advance money to builders at a reduced rate of interest, and also to undertake to guarantee the repayment to any corporation or other body of persons of any advances, with interest thereon, made by them to any persons for the purpose of enabling such persons to build approved houses.

Government grants in respect of houses erected by private builders ceased on the 30th September, 1936, and in respect of those erected by local authorities on the 31st March, 1937.

The Housing Act, 1944, provides for the payment of grants by the Government to local authorities and housing associations in respect of schemes approved for the housing of the working classes. Provision is also made whereby local authorities may compulsorily acquire land for housing purposes.

4. **Town and Country Planning.** Part I of the Planning and Housing Act (Northern Ireland), 1931 (Part II of which provided, *inter alia*, for slum clearance schemes), empowered County Borough, Borough, Urban District, and County Councils, which last mentioned could transfer their powers to Rural District Councils, to prepare and enforce planning schemes in respect of the land included in their respective areas of jurisdiction.

The application of the Acts in many areas was dependent upon the Council passing a resolution to prepare or adopt a scheme. By the Planning (Interim Development) Act (Northern Ireland), 1944, preparation of planning schemes became mandatory, every planning authority which had not already done so being deemed to have passed a Planning Resolution three months after the passing of the Act. As from 25th April, 1944, therefore, all land in Northern Ireland became subject to planning control. The central authority for the approval of schemes is the Ministry of Health and Local Government.

5. **Intoxicating Liquor Acts, 1923 and 1927.** These Acts make provision for the closing of certain premises for the sale of intoxicating liquor on Sundays and Christmas Days, and for the better regulation of clubs.

6. **Jury Laws Amendment Act, 1926.** This Act provides a more equitable basis of service for jurors.

7. **Elections.** Several Acts dealing with Local Government Elections and Representation, etc., have been passed since the establishment of the Government of Northern Ireland. The Act passed in 1922 abolished the principle of Proportional Representation for Local Government Elections. A further Act passed in 1923 prescribed a minimum valuation of £5 in the case of land or premises, other than dwelling-houses, as a condition precedent to the occupier or owner becoming eligible as a Local Government elector. The Representation of the People Act, 1928, assimilated the Parliamentary and Local Government Franchise of men and women, and introduced the principle of according to Limited Liability Companies votes at Local Government Elections. The 1928 Act also introduced, in the case of persons relying solely upon residence or the occupation of a dwelling house or other premises other than business premises of less than £10 valuation as qualification for the Northern Ireland Parliamentary franchise and Local Government franchise respectively, an overriding qualification of Northern Irish Birth or continuous residence in the United Kingdom for a period of three years ending on the last day of the qualifying period for registration. The last-mentioned provision was amended by an Act passed in 1934, the three years' residence qualification being increased to seven years. This Act also provided for the subscription by all candidates for membership of the Northern Ireland House of Commons at the time of nomination of a declaration of their intention to take their seats if elected. Other matters dealt with in the 1934 Act were modifications in the procedure in connection with blind voters at all elections and with the limited liability company franchise in Local Government elections.

8. **Motor Traffic.** In 1926 an Act was passed which transformed the whole system in regard to motor traffic in Northern Ireland. The Act amended the Motor Car Act, 1903, and other analogous statutes in certain respects, i.e. by abolishing the old 20 mile an hour speed limit, by requiring applicants for motor licences to make declarations of physical fitness; by imposing heavier penalties for the more serious offences of (a) dangerous driving and (b) drunkenness in charge of a car; and by reducing the penalties for technical and minor offences. In addition, the Act established a central system and scheme of licensing and regulation of public service vehicles and their drivers and conductors. Under this Act, all operators of public service vehicles have to keep their vehicles in a proper and fit state of repair.

By a further Act passed in 1929 the principle of regulating public service vehicle traffic was extended as regards the prescription of routes, the arranging of time-tables, and the fixing of fares. For the purpose of fixing the fares to be paid by passengers and the rates to be charged for luggage and parcels provision was made for the setting up of a Fares and Rates Tribunal. The Motor Vehicles Road Traffic Act, 1930, prohibits the use of motor-cars unless there is in force in relation thereto a policy of insurance against third party risks. Comprehensive amendments were again made in the law relating to road traffic by the Motor Vehicles and Road Traffic Act (iv. 1), 1934, which not only deals with increased stringency with matters such as drunkenness in charge of motor-car, third party insurance, etc., already legislated for in earlier Acts, but also brings within the scope of the Road Traffic Acts drivers of other vehicles, pedal cyclists, and pedestrians.

The Road and Railway Transport Act (N.I.), 1935, effected a very important change in regard to road transport in Northern Ireland. Under it a Road Transport Board was set up with the object of securing, in conjunction with the railway companies, a properly co-ordinated system of transport in Northern Ireland giving efficient, economical and convenient services to the public. The Board is empowered under the Act to acquire, with certain exceptions, every road motor undertaking operated for hire or reward in Northern Ireland, including the passenger and freight road transport services of the railway companies, and to operate a comprehensive service of the same nature. The powers and duties of the Board in this respect are prescribed in detail in the Act.

In the furtherance of this scheme the Act precludes any person, other than the Board, from using a motor vehicle for the conveyance of passengers or their luggage or the carriage of merchandise

for hire or reward except with the consent of the Board and the approval of the Ministry of Home Affairs. It also contains provisions regarding the consideration to be paid for transfer of undertakings and the establishment of an arbitration tribunal for the purpose of determining such consideration in any case where the owner of an undertaking and the Board fail to agree. With a view to the co-ordination of services between the Board and the railway companies the Act provides for the pooling of receipts and the establishment of a joint committee composed of members appointed by the Board and the railway companies, respectively, for the purpose of securing such co-ordination. Amendments are also made in the law relating to railways and canals, the railway companies being given power to charge such reasonable fares, rates and charges as they think fit. As a corollary interested parties have been given power to make representations to the Ministry of Home Affairs regarding rates, fares, charges and facilities and a Transport Appeal Tribunal has been established for the purpose of deciding applications for the revision of fares chargeable by the Board or any railway company or for the modification of any conditions applicable to such fares, and similarly in regard to rates charged by any such body for the carriage of merchandise or for the modification of any conditions applicable to such rates where desirable adjustments cannot be obtained by the Ministry.

The Fares and Rates Tribunal set up under the Act of 1929 ceases to exist in consequence, and the necessity for the detailed regulation of public service vehicle traffic by the Ministry of Home Affairs which has obtained in recent years no longer exists.

9. Roads and Roads Development. The Local Government (Roads) Act, 1923, effected considerable changes in respect of the chargeability of expenses and maintenance, etc., of the important trunk roads in the counties. It extends the power to make road improvement advances, and removes the statutory limit upon road expenditure in rural districts, and thus paves the way for a comprehensive and uniform system of administration in connection with the upkeep of these roads. The Roads Improvement Act, 1928, very materially simplified the procedure for the compulsory acquisition of land needed for road improvement purposes and legalized the position regarding kerbside petrol pumps which may now be erected on public roads under licences granted by the highway authorities.

It also enables local authorities to provide parking places for motor-cars and contains a number of other enactments which are calculated to make travelling by road safer.



The Roads Act, 1937, empowers the Ministry of Home Affairs to construct any new roads which may appear to the Ministry to be required for facilitating road traffic and to acquire land either by agreement or compulsorily for such purposes.

10. **National Health Insurance.** In accordance with the provisions of the National Health Insurance Acts (Northern Ireland), 1936-38, and Regulations made thereunder, insured persons resident in Northern Ireland are entitled to all the benefits conferred by the corresponding Acts in force in Great Britain. Medical benefit is, however, administered by the Ministry of Labour for Northern Ireland, and not by Insurance Committees as in Great Britain.

11. **Old Age Pensions, etc.** Under the provisions of the Old Age Pensions Act (Northern Ireland), 1936, pensions are granted to persons 70 years of age and upwards who fulfil certain statutory conditions as to age, nationality, residence and means.

Pensions under the said Act, as amended by the Blind Persons Act (Northern Ireland), 1938, are also paid to persons of 40 years of age and upwards who fulfil the same conditions as outlined above, and are, in addition, so blind as to be unable to perform any work for which eyesight is essential.

Under the provisions of the Widows', Orphans', and Old Age Contributory Pensions Act (Northern Ireland), 1936, pensions are payable to widows and orphans fulfilling certain statutory conditions, and allowances are also payable in respect of children under the age of 16 years, while old age contributory pensions are payable to insured persons and the wives of insured persons who are over 65 years of age.

The schemes outlined above are substantially the same as those operative in Great Britain and are administered by the Ministry of Labour for Northern Ireland.

12. **Royal Ulster Constabulary.** The Constabulary Act, 1922, made provision for the establishment, management, and control of the Royal Ulster Constabulary.

13. **Summary Jurisdiction.** The Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935, amends the law relating to the powers and duties of Justices of the Peace and assigns most of their judicial functions to Resident Magistrates exclusively. The Act also amends the law relating to the delimitation of Petty Sessions districts and to the payment of Clerks of Petty Sessions, and makes certain extensions in the powers of Courts of Summary Jurisdiction in criminal and civil matters.

14. **Trade Boards.** The Trade Boards Act, 1923—"to consolidate and amend the law relating to Trade Boards in Northern

Ireland,"—came into operation in November, 1923. The Act embodies such recommendations of the Dufferin Advisory Committee on trade boards as required legislative action. Under the provisions of the Act the machinery necessary to secure a revision of rates has been speeded up. This amendment was introduced to meet one of the main objections raised before the Dufferin Committee to the statutory regulation of wages, namely, the delay necessary before revision of rates could be secured to meet changing conditions of trade. In addition to minor amendments designed to facilitate the working of the trade board system, it was also enacted, in the interest of economy in administration, that the number of appointed members on each board should be limited to one acting in the capacity of chairman.

15. **Unemployment Insurance and Unemployment Assistance.** By a series of Amending Acts passed between 1922 and 1935, the Unemployment Insurance Scheme in Northern Ireland has been maintained on a similar basis to that of the British Scheme. These Amending Acts and the Statutory Rules and Orders made under them have embodied all the essential provisions of the corresponding legislation in Great Britain. Under Part II of the Unemployment Act (Northern Ireland), 1934, a complementary scheme of Unemployment Assistance parallel to that in operation in Great Britain has also been set up, and came into operation on 1st April, 1937.

The Poor Relief (Amendment) Act (Northern Ireland) 1937, provides that practically all able-bodied persons not coming within the Unemployment Act may receive outdoor relief from the Boards of Guardians under the Poor Relief (Amendment) Act, 1937.

16. **Rent Restrictions.** Part I of the Rent and Mortgage Interest (Restrictions) Act, 1940, continues the control of dwelling-houses with valuations of £26 and under, until twelve months after the end of the period of the emergency. Part II of the Act extends control to include any house or part thereof let as a separate dwelling of which the net annual value does not exceed £75 until six months after the end of the period of the emergency.

The legal or standard rent permitted to be charged for the earlier controlled houses is that payable on 3rd August, 1914, plus certain percentage increases allowed, and for houses brought under control by Part II of the 1940 Act that payable on 1st September, 1939.

The Excessive Rents (Prevention) Act, 1941, as amended by the Rent Restriction Law (Amendment) Act of 1943, provides for the setting up of Rents Tribunals to enable aggrieved tenants

of lettings made since 2nd September, 1939, to appear before them for the purpose of having a fair and reasonable rent fixed. Rents Tribunals have no jurisdiction where the legal or standard rent of the dwelling has been determined under the Rent Restrictions Acts, but all other lettings come under their jurisdiction whether or not the letting is at a rent which includes payments in respect of the provision of lighting, heating, furniture, or other services.

17. **De-rating.** The Local Government (Rating and Finance) Act (Northern Ireland), 1929, and the Rating and Valuation Act, 1928, provided for the total de-rating of all agricultural land and agricultural buildings in Northern Ireland as from the 1st April, 1929, and the partial de-rating of productive industry and of railway undertakings and docks as from the 1st October, 1929, subject to provision being made for the benefit to railway and dock undertakings being passed on to industry in the form of reduced charges. The loss of rates to local authorities is recouped in the case of urban authorities on the basis of certified returns of the actual loss and in the case of rural authorities by means of standard grants fixed for five years, and based on average expenditure in the past, supplemented by additional grants to cover increasing expenditure. The Local Government (Finance) Act (Northern Ireland), 1936, provided that these Standard Grants should be fixed permanently. Government contributions to the local authorities in respect of loss of rates amount to over £1,000,000 annually, so that in effect in the rural areas of Northern Ireland the Government of Northern Ireland is the largest ratepayer.

## GOVERNMENT DEPARTMENTS

Certain changes in regard to Government Departments have been made dating from 1st June, 1944.

By an Order in Council, dated 26th May, 1944, made under Section 4 of the Ministries Act (Northern Ireland), 1944, the functions of the Ministry of Home Affairs in respect of Local Government, Public Health and Housing were transferred to the Ministry of Health and Local Government as from the 1st June, 1944.

By further Orders in Council dated 15th December, 1944, and 21st March, 1945, respectively, the functions of the Ministry of Home Affairs in respect of roads and road transport were transferred to the Ministry of Commerce as from the 15th December, 1944, and the functions of the same Ministry in regard to drainage were transferred to the Ministry of Agriculture as from the 1st April, 1945.

## CHAPTER XXXIV

### WAR CHARITIES AND PENSIONS

#### THE WAR CHARITIES ACT, 1916

THIS Act was the immediate outcome of a Special Committee appointed in April, 1916, by the Home Secretary, "to consider representations which have been made in regard to the promotion and management of charitable funds for objects connected with the War, and to advise whether any measures should be taken to secure better control or supervision of such funds in the public interest."

The Act provides that it is not lawful to make any appeal to the public for donations or subscriptions in money or kind to any war charity unless the charity is registered under this Act.

#### The Registration Authority—

(a) In the City of London is the Mayor, Aldermen, and Commons of the City of London assembled in Common Council;

(b) In a municipal borough or urban district is the council of the borough or district;

(c) Elsewhere it is the County Council;

and any such council may act through a committee, which may comprise persons (including women) who are not members of the council.

Charities registered under the Act must be administered by a committee or other body of not less than three persons; keep proper books of accounts, audited at such intervals as may be prescribed; keep a separate account at such bank or banks as may be specified; furnish either to the Registration Authority or the Charity Commissioners such particulars as may be required, and keep books of accounts open to inspection.

The Charity Commissioners may make regulations respecting the above matters.

The Blind Persons Act, 1920, extends compulsory registration to all charities for the blind which appeal to the public.

The Charitable Trusts Act, 1925, makes the official trustees of charitable funds a body corporate with an official seal, which must be officially and judicially noticed.

#### NAVAL AND MILITARY WAR PENSIONS, ETC., ACTS

The Naval and Military War Pensions, etc., Act, 1915, has been amended by the Naval and Military War Pensions, Etc., Act,

1916; the Naval and Military War Pensions, etc. (Transfer of Powers), Act, 1917; the Naval and Military War Pensions, etc. (Administrative Expenses), Act, 1917, and the War Pensions Act, 1921.

The Objects of the Acts are purposes relating to pensions and grants and allowances made in respect of the War to officers and men, their wives, widows, children, and other dependants, and the care of officers and men disabled.

The Central Administration was transferred to the Ministry of Pensions as from 15th February, 1917, in accordance with the Ministry of Pensions Act, 1916.

1. The Constitution of Local War Pensions Committees is provided for under a scheme framed by the central authority under the War Pensions Act, 1921. The committee so established shall not exceed twenty-five members, appointed by the Minister of Pensions, and the scheme shall provide for the inclusion of representatives of:

- |                                                                                                  |                             |
|--------------------------------------------------------------------------------------------------|-----------------------------|
| (a) Disabled men who were discharged during the War.                                             | } not less than one-quarter |
| (b) Women in receipt of pensions arising out of service during the War.                          |                             |
| (c) Such local authorities whose districts are situated in the area.                             | } one-fifth                 |
| (d) Employers and workmen in industry in equal numbers.                                          |                             |
| (e) Voluntary associations engaged in the care of ex-service men and their families in the area. |                             |

Not less than four members of the committee shall be women.

2. Functions of Local War Pensions Committees. The functions of the committee as provided by the 1921 Act are—

- (a) To consider and make recommendations as to the administration of War pensions.
- (b) To receive reports from officers as to the state and progress of applications.
- (c) To hear and consider complaints by persons in receipt of pensions and to make representations to the Minister.
- (d) To inquire into any matter referred to them by the Minister.
- (e) To make arrangements for the distribution of supplementary grants.
- (f) To consider applications for grants from departments, bodies or associations.
- (g) To perform duties in relation to children for whom the Minister is responsible.

(h) To take steps to secure co-operation of voluntary workers.

(i) To perform such other duties as the Minister may by regulation prescribe.

The system is a very complicated one, too detailed to be dealt with fully, but the following points may be useful as a general guide to the subject.

### 3. Pensions for Men are granted as follows—

(a) Disablement Pensions and Allowances or Gratuities to men who come within one of the following classes—

(1) Discharged as Medically Unfit for further service or while suffering impairment of health attributable to or aggravated by service during the Great War of 1914-18.

(2) If, after demobilization or discharge, he is suffering from a disablement which is certified as attributable to or aggravated by his service.

(b) Alternative pensions are provided to meet the case of a man whose pre-war earnings (with the addition of 60 per cent) were higher than his pension and allowances together with the average earnings of which the man is still capable. If granted, it is in substitution for the Disablement Pension and allowances for wife and children.

### 4. Pensions for Widows and Dependants of Men

(a) WIDOWS' FLAT-RATE PENSIONS. Widows' pensions are granted under three different conditions enumerated in the Articles of the Royal Warrant.

(b) WIDOWS' ALTERNATIVE PENSIONS. A Widow's Alternative Pension is a pension based on her husband's pre-war earnings, and where granted is in substitution for the pension and children's allowance awarded under Article II of the Royal Warrant.

(c) PENSIONS FOR MOTHERLESS AND ILLEGITIMATE CHILDREN. A pension may be granted where any child of a man who died is or becomes motherless, or has been removed from the control of its mother.

(d) SEPARATED WIVES. A wife who was separated from her husband and would otherwise have been entitled to a pension as a widow may be granted a pension equal to the amount due to her under a separation order, or otherwise paid by her husband.

(e) UNMARRIED WIVES. Any woman who has lived as his wife with a man, who died in the circumstances similar to (b), may be granted a pension if she was wholly or substantially

dependent on that man, and if she has been drawing or has been eligible for separation allowance as for a wife.

(f) PARENTS. "Parent" includes a grand-parent, or other person who has been in the place of a parent to the man, and has wholly or mainly supported him for not less than one year at some time before the commencement of the War.

(g) OTHER DEPENDANTS. Pensions are granted to dependants other than parents and those mentioned above only where the dependant is wholly or partially incapable of self-support and is in pecuniary need.

Under the War Pensions Act, 1921, the Minister may, on the application of any person in receipt of a pension, commute any part of the pension by the payment of a capital sum. The War Pensions Act, 1921, limited the time for making claims to pensions in respect of disablement to seven years after the date on which the claimant was discharged or the date fixed for the termination of the War, whichever date is the earlier.

## 5. Medical Services

(a) ORGANIZATION. Medical Boards are of three kinds: (1) Medical Discharge Boards; (2) Medical Survey Boards; (3) Medical Appeal Boards. Local Committees may send men to the Assistant Director of Medical Services who has the duty of examining and certifying men as to treatment, training, degree of disablement, extent of increase of disablement, and physical condition.

(b) TREATMENT. Treatment is available where a claim for pension has already been decided by the Ministry for a man suffering from a disablement attributable to or aggravated by service.

(c) TRAINING. Training is provided under normal conditions by the Ministry of Labour or the Ministry of Agriculture and Fisheries.

## 6. Subsequent Appeals

(a) Claims are made in the first place under Article 9 of the Regulations to the Area Office.

(b) Within twelve months appeal lies to the Pension Entitlement Appeal Tribunal where the decision is given against the claimant as not attributable to or not aggravated by military service or that the aggravation has passed away. (Min. Circ. 202, 201, 195.)

(c) If under-assessed, appeal lies to the Assessment Appeal Tribunal in all cases after the award of pension as well as within twelve months in all cases.

(d) Where award has been "finalized" and not appealed against within twelve months, appeal lies to the **Errors Board** who put the claimant under observation in a hospital and then claimant is re-boarded and, if necessary, re-assessed.

7. Officers have now been taken over by the Minister of Pensions in accordance with the War Pensions Act, 1921.



## CHAPTER XXXV

### SUGGESTIONS TO MEMBERS OF LOCAL AUTHORITIES

WHEN first elected, a member of any local authority should make it his business to get to know the Standing Orders governing the procedure. There should be Standing Orders for all local authorities, and their adoption does much to improve the work of the authorities. Model Standing Orders have been issued by the Ministry of Health.

Attendance at the Committee Meetings is important for it is here that the principal business of the local authority is transacted. Close attention to this will often save unnecessary speeches and questions in council. To be appointed upon committees on whose work a member is competent to advise to the best advantage is obviously beneficial. To get a vote through committee or council as little as possible should be said, but that little should be to the point. When a councillor has a new proposition to bring forward, he should consult the official at the head of the department concerned and obtain his views as to the competency or legality of the matter proposed to be brought forward.

Councillors will then find that the officials will be able to put them on the right lines for stating their propositions and will guard them against errors in procedure, etc.

### FINANCE COMMITTEE

A Finance Committee should be appointed for all local authorities. The members should include the Chairman and (if the committee is not too large) one other member of each committee, together with the Chairman of the council and the leader of each party represented on the council. All financial matters should stand referred to the Finance Committee before coming before the council, and the Finance Committee should submit their observations upon such proposals. The Chairman of such committee should be a councillor well versed in finance.

### ESTIMATES

Estimates should be prepared for either six months or twelve months. Statements of the income and expenditure (or receipts and payments) against such estimates should be submitted periodically (e.g. quarterly) based upon the balanced books of accounts. The estimates should be so arranged that there are sufficient sums in hand to carry on until the demands of the new

precept are met. Borrowing from loans authorized for other purposes, being illegal, should be avoided.

### **BANK ACCOUNTS**

Separate Bank Accounts are desirable in certain cases, e.g. Allotments or Adoptive Acts in the case of a Parish Council; Private Street Works in the case of a District Council. Standing Orders should provide that all the bank pass books, together with the treasurer's or accountant's reconciliation statements of all accounts, should be laid on the table at all meetings of the council or Finance Committee.

If separate Bank Accounts are not kept the analysis of the various funds should be done at regular intervals and submitted, with the Pass Books, to the council or Finance Committee.

### **CONTROL OF ACCOUNTS AND FINANCE**

The same official should not be responsible for receiving and accounting for money, or for certifying and paying accounts. Even in the smallest authorities this can invariably be avoided. For example, in the Chief Financial Officer's Department the receipts should be entered up by a different official from the one who actually receives the money over the counter. With regard to expenditure, the ledger clerks, time-keepers, and store-keepers should not be under the control of the engineer or surveyor who is directing the carrying out of the work. In like manner, the wages should not be paid by the timekeeper, but by an official from the Department of the Chief Financial Officer, from records prepared by another official and certified by the principal official in charge of the work. The submission to the Finance Committee of all officers' petty cash accounts with the necessary vouchers would prevent many minor irregularities.

### **STOCK ACCOUNTS**

Stock Accounts should be kept of all materials. It is often forgotten that stocks of materials constitute a very important part of the assets of local authorities. A store-keeper will, in many cases, save the amount of his salary by economy in control of stores. He should be responsible to the Chief Financial Officer, and not to the official who uses the material, e.g. the engineer or surveyor. In the case of materials delivered by contractors direct to work in progress, a depot should be created under a store-keeper, who, upon the completion of the work, should arrange for the delivery of the surplus material to the nearest store-yard or the next depot.

## WORKS DEPARTMENTS

Works Departments may be developed to great advantage, especially in large and growing districts. The character of these departments will depend upon the state of development of the local area and the amount of its trading activities. Generally speaking, every authority should remove its own refuse, provide its own sewage disposal works and water undertakings. The maintenance of a works department for the repair of carriage-ways and footways, while usually more expensive than by private contract, has much to commend it. A system of Return Sheets of work done will constitute a rough but very efficient method of controlling the administration of a works department. Costing accounts should be in operation in all large authorities.

## OFFICIALS

The best officials are those with a liberal education, administrative experience, and a good civic spirit. While policy is a matter for the council and administration for the officials, it is desirable to give careful consideration to the advice of experienced officials. The shortcomings of chief officials should be as readily checked as those of a subordinate. An inefficient head can do far more damage than an inefficient subordinate. Officials will always be prepared to give advice and assistance, apart from party political considerations.

Officials should be encouraged to make themselves more efficient by studying for and passing the various professional examinations. An addition to the salary for such qualification would prove a great incentive to study. At the present time there are available the examinations of the Institute of Municipal Treasurers and Accountants (Incorporated), and the Society of Accountants and Auditors, for finance officers; the Incorporated Association of Rating and Valuation Officers for those who are engaged in that branch of the profession; the Poor Law Examinations Board for officials in the Public Assistance Service. For the general official there are also the examinations of the National Association of Local Government Officers, and, in a limited degree, those of the Chartered Institute of Secretaries. There are, in addition, diploma courses of the London School of Economics, and the Schools of Social Study attached to the Universities. The University of London and certain provincial Universities have established degrees and/or diplomas in Public Administration.

Appointments by open competition, especially among members of the junior staffs, should be developed. This will prevent much "log rolling," and tend to efficiency in administration. Promotion

in the service might be made to depend upon the holding of the certificate of one or other of the institutions previously referred to. Permanency of appointment should be made upon efficiency of service rather than seniority.

## INSPECTIONS

The Central Departments appoint inspectors for certain specified duties as described in Chapter IV. It has been suggested that it would be a good thing if there were inspectors of local authorities possessing authority to examine the general procedure of the work. This would prevent irregularities, especially in the case of our smaller local authorities.

## GENERAL

A councillor should make himself familiar with all new legislation affecting local authorities. He should call for a report upon all new Acts of Parliament and Government Reports, which either directly or indirectly affect his Authority. This will result in the staff becoming familiar with such legislation as well as himself. A good reference library for the use of councillors and officials is a sound investment for the ratepayers.

He should specialize in one direction, besides keeping in touch with the general work of the local authority. For example, it would be advantageous to the community as well as to the Authority if, being interested in social administration, he confined himself to Education, Child Welfare, etc. He should find out what his Authority has done in the particular work, and avail himself of the assistance of the officials concerned.

It is advisable for a member to report at frequent and regular intervals to the electors, and familiarize them with the work of the local authority. Where possible, parties of electors should visit the undertakings. These are the property of the electors, and the more they see of them the more they will appreciate the services which the councillor is discharging. It is far wiser to do this than to invite other persons less interested.

A councillor should cultivate friendly relations with members subscribing to opposite schools of political thought. He can do this without minimizing his differences in politics. It is frequently found that there is full agreement in local affairs, and besides adding to the sociability of life it will be possible to learn much from political opponents. Members of Education Committees should try to arrange meetings of representatives from schools. These men will often help to visualize facts which appear vague on paper.

## CHAPTER XXXVI

### SOCIAL SERVICE

THE Social Service movement of modern times is not confined to any one class, nor is it the monopoly of the few, neither is it the preserve of a particular section of people. It has arisen out of a deep discontent with the incidents of the social organism, and among its leaders have been some of the greatest minds of our times. It is not a movement concerned alone with material things—housing, drains, gas, water, clinics, and welfare centres, etc., but is the expression of the desire for social justice, for freedom and beauty, and for the better apportionment of all those things that make for a good life. Social Service is not a particular set of activities so much as an attitude of mind to all human actions. It is the demand that their existence, as members of society, and as members of a particular part of that society, makes on all men and women. It is essentially the duty of citizenship not only to the city and the State, but to the world. Charity in its highest human form is the expression of the love for one's fellows and is at the root of all vital social work. Society is far more self-conscious than it was in the past, and the social conscience is at work among men and women of all classes. The Settlement movement was an early expression of this, and the increased searchings of heart in the Churches as to the relationship between the principles of Christianity and business, and the difficulty of reconciling the two, are becoming more and more evident.

The demand of the social reformer to-day is for a new attitude to social problems rather than for specific reform in any particular department of life. As has been seen, during the nineteenth century a great advance was made in the science of preventive medicine. Instead of being concerned almost entirely with healing disease after it had arisen, medical science turned to the improvement of the environment, and the prevention of disease. So also in the realm of social reform, the effort is now being directed chiefly towards the removal of the cause of the evil rather than the healing of the disease.

The ideal of life should be to make service rather than success the first aim. Service entails sacrifice. Many of our citizens are willing to give of their best, and the following brief summary is intended to direct them to the attainment of their object. The rise of democracy has changed the outlook of the social worker;

formerly social work was done for the working classes, now it is being done in co-operation with them.

## ORGANIZATION OF SOCIAL WORK

The National Council of Social Service (Incorporated) formed in July, 1915, has for its object the development and co-ordination of Social Service. The Office is at 26, Bedford Square, London, W.C.1. The intention is to organize voluntary social work throughout the country so as to secure complete co-ordination, and with that object to form—

Local Representative Councils coinciding generally with local government areas, to co-ordinate voluntary and official social work, to promote such new efforts as may seem advisable, and to promote the training of social workers as recommended by the Joint University Committee on Social Service.

A Ministry of Education Juvenile Organizations Committee has been established to assist work among juveniles by Local Representative Committees. The Organizing Secretary, Ministry of Education, Whitehall, London, S.W.1.

Social Service is an attractive form of citizenship, for in it is particularly emphasized the position of men and women as citizens. The extension of local and central government into many new spheres of activity, particularly public health and education, and the increased efficiency of municipal administration in general, have narrowed some spheres of unorganized voluntary effort and co-ordinated others, thus forming a framework within which voluntary action may operate. Increased education among the general public, and a better appreciation of the causes of distress, have reduced indiscriminate alms-giving and turned the attention of the charitable to the results of their actions. Besides the organization of voluntary social work by various societies, there has grown up during the past half-century a municipal system that touches a large part of the field of social service. It may be said that the local governing authorities are to-day the principal instruments for the organization of social work. As the local authority has now become the chief agency for the organization of social work, the voluntary worker is continually being brought into contact with its various activities, even where he is not actually working in close co-operation.

## OPPORTUNITIES FOR SOCIAL SERVICE

In compiling the following list of positions which give opportunities for social service in the sphere of local government, it has been presumed that the worker does not desire to seek the suffrages of the electors,

The reader is directed to the preceding chapters for any details which may be required in respect to the subject in which he is particularly interested.

**Parish Council.** The Chairman may be elected from outside the membership of the council, as stated in Chapter VII.

**District Council.** The Chairman of the Rural or Urban District Council may be elected from outside the council, as described in Chapter VIII.

The **Justice of the Peace** is appointed by the Crown, and the office is one which affords ample opportunity for social service, as indicated in Chapter X.

In the administration of **Public Health**, the membership of Maternity and Child Welfare Committee is open to others besides councillors (at least two of whom must be women), as explained in Chapter XII.

With regard to **Housing**, a demand for an Improvement or Reconstruction Scheme may be made by six ratepayers. A report on any house may be made by four or more householders as a result of which the local authority must require a report from the Medical Officer of Health. Membership of the Housing Committee is now open to other persons besides councillors as described in Chapter XIII.

In dealing with **Town Planning Schemes**, anyone may make representation for a scheme in accordance with the procedure described in Chapter XIV.

The **Adoptive Acts** afford opportunity for initiative either by individuals or by an association of individuals. Thus, with regard to the Public Libraries Acts, ten electors may requisition the local authority to take action, while in connection with the Small Holdings and Allotments Acts, any six Parliamentary electors or ratepayers may make representations, as described in Chapter XV.

During the War many public-spirited citizens acted as **Special Constables**, and such may be appointed in emergencies at any time, as shown in Chapter XVII.

The **Education Committee** includes not more than one-half persons who are co-opted by the council, while Managers and Correspondents of Schools are also appointed from the general body of citizens, as well as helpers in Play Centres. The Choice of Employment Act provides for the co-optation of membership of Advisory and After-Care Committees, as described in Chapter XXI.

The **Children Act, 1908**, as amended by the Children and Young Persons Act, 1933, provides for Voluntary Child Life Protection Visitors and for Visitors to institutions for reception

of poor children and young persons, and for the appointment of Managers of Reformatory, Industrial and Truant (now Approved) Schools. Probation officers for juvenile offenders may also be voluntary, as described in Chapter XXII.

In the case of **Mental Treatment**, membership of the Committee for the Care of the Mentally Defective and Voluntary Associations for Mental Welfare is open to non-councillors, as shown in Chapter XXIV.

The **Old Age Pensions Acts** enable membership of the Local Pension Committee to be available to others besides councillors, as described in the author's *Social Administration*.

While the **Employment Exchanges** are administered by officials of the Ministry of Labour, the work of the officials is assisted by various committees. Thus, membership of Local Employment Committees, Juvenile Employment Committees, and After-Care Committees as well as Assessors of Courts of Referees is open to men and women who are interested in social questions, as described in *Social Administration* and Chapter XXV.

The work of the **Trade Boards** is rather outside the scope of local authorities. It affords, however, opportunities for both employers and workpeople who are interested in the improvement of their trade to undertake service upon the various committees of the Trade Board, as shown in *Social Administration*.

The majority of the members of **National Health Insurance Committees** are elected from outside the appointing council, as explained in *Social Administration*.

The **Unemployment Insurance Acts** provide for Local Employment Committees and Juvenile Employment Committees as well as for panels of membership of the Court of Referees, as described in *Social Administration*.

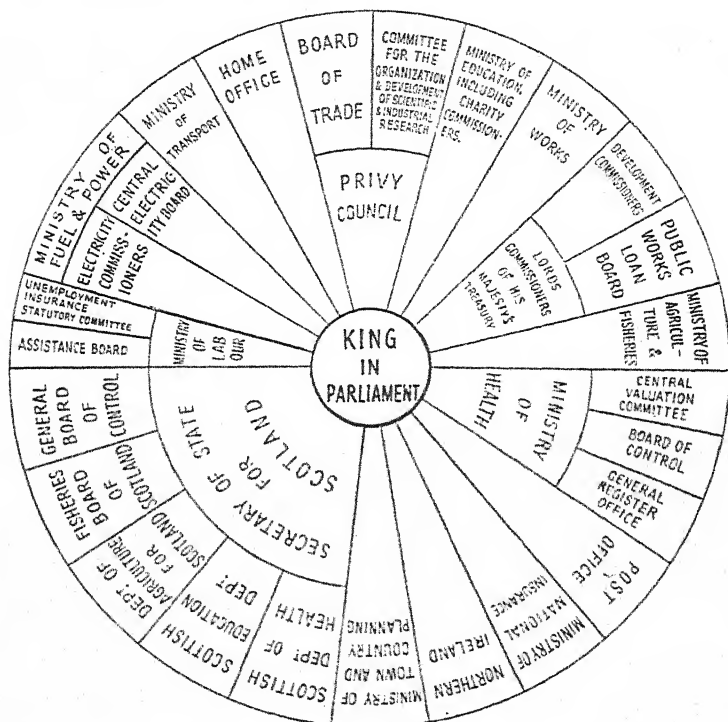
The work of the **War Charities Committee** and the **Local Pensions Committee** has been described in Chapter XXXIV.

In addition to all the above, there are many other opportunities for **Personal Service**. In particular there are spheres of activity in addition to those mentioned above whereby the citizens may render service as members of Guild of Help, Council of Social Service, Personal Service Committee, visitors to and lecturers in H.M. prisons, settlements, etc.



## APPENDICES

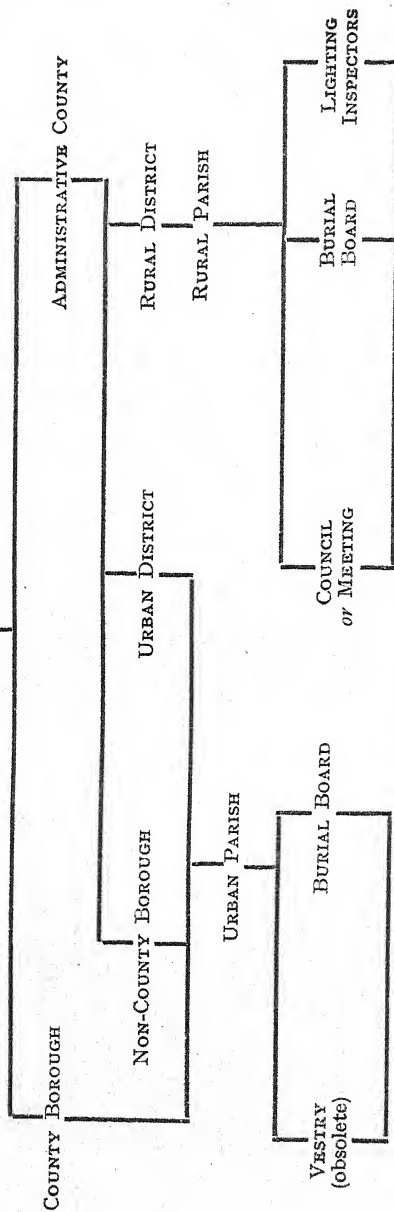
## I. CENTRAL DEPARTMENTS OF THE STATE DEALING WITH LOCAL GOVERNMENT IN THE UNITED KINGDOM



NOTE.—In attempting a visual representation of this kind some suggestion of false proportion is inevitable, and it is well to warn the reader that the spaces allotted to different departments must not be taken as an indication of their relative importance.

## II. TERRITORIAL DIVISION OF ENGLISH LOCAL GOVERNMENT AREAS

### GEOGRAPHICAL COUNTIES



NOTE. Each Local Authority, with the exception of the County Borough and County Council, administers, broadly speaking, a Unit forming a component part of another Authority's Area—  
 Thus: The Administrative County contains the Areas of Non-County Boroughs, Urban Districts, and Rural Districts;  
 The Non-County Borough and Urban District contain the Area of one or more Urban Parishes;  
 The Urban Parish may have a Burial Board;  
 The Rural District contains the Area of one or more Rural Parishes;  
 The Rural Parish possesses a Parish Council or a Parish Meeting, and may possess a Burial Board and Lighting Inspector.

### III. LOCAL GOVERNMENT IN ENGLAND AND WALES FUNCTIONS, CONTROL, ADMINISTRATION AND FINANCE

FUNCTION	CENTRAL CONTROLLING AUTHORITY	LOCAL ADMINISTRATIVE AUTHORITY	FINANCE	REMARKS
Public Health Housing Town and Country Planning Highways, Streets, and Bridges	Ministry of Health Ministry of Health Ministry of Town and Country Planning Ministry of Transport	{ County, County Borough, Borough, and District Councils County, County Borough, Borough or U.D.C.	{ Rates: No Statutory Limitation	Rural District Council may delegate functions to Parish Council County District Councils may relinquish to County Council County Councils may delegate to District Councils
Public Undertakings	{ Board of Trade Ministry of Health Ministry of Transport Ministry of Fuel and Power	{ County, County Borough, Borough, and District Councils C.C., C.B.C., B.C., also Urban District and Parish Councils, Burial Boards, Lighting Inspectors	{ Limitation of Charges in certain cases	Special restrictions as to Adoption of Acts
Adoptive Acts	Ministry of Health	{ C.C., C.B.C., B.C., U.D.C., R.D.C. and P.C.	{ Rates: Statutory Limitations in some cases	Electors may make representations
Small Holdings and Allotments	{ Ministry of Agriculture and Fisheries	{ C.C., C.B.C., B.C., U.D.C., R.D.C. and P.C.	{ Rates: No Statutory Limitations	{ C.C. must appoint Small Holdings Sub-Committee Any Six Electors or Ratepayers may make representations
Public Protection, viz. Police and Civil Defence	Home Office and Ministry of Home Security	County Councils, also Borough Councils: 10,000 Population	One-half net approved cost of police refunded from Government Grants on satisfactory Report	Parish Councils may appoint Parish Constables. Application to Quarter Sessions or Home Office
Education— (1) Further (2) Primary (3) Secondary	Ministry of Education Ministry of Health for Audit	C.C. & C.B. Councils	Rates: No Statutory Limit. Gov. Grants	(1) Divisional Educational Expenditure (2) P.C., U.D.C., or B.C. may be Minor Education Authority

FUNCTION	CENTRAL CONTROLLING AUTHORITY	LOCAL ADMINISTRATIVE AUTHORITY	FINANCE	REMARKS
Moral Improvement . . .	Ministry of Health	Children Act, 1908—Pt. I: Public Assistance Author- ity Children and Young Persons Act, 1933 Pt. I; II and V: Police (generally) IV: Education Pt. II and V: Education Authority; C.C. and C.B.C.	Rates: Part of General Rate	Social Welfare Work, Infant Life Protection
Children and Young Persons Acts .	Home Office		Government Grants	Visitors may be Voluntary
Mental Deficiency: Mental Treat- ment	Board of Control (Ministry of Health)	{ County and County Borough Councils	Rates: Part of General Rate Government Grants	Visiting or Mental Hospitals Committee
Public Assistance . . .	Ministry of Health	County and County Borough Councils	Rate: No Statutory Limita- tion	Public Assistance Authority
War Pensions . . . . .	Ministry of Pensions	Local War Pensions Com.	Provided by Parliament	C.C. and C.B.C.

# APPENDIX IV PRINCIPAL LOCAL AUTHORITIES IN ENGLAND AND WALES CLASSES AND NUMBERS

The following figures are revised to June, 1946—

County Councils . . . . .	63
Councils of County Boroughs . . . . .	83
Metropolitan Borough Councils (including City of London)	29
Town Councils . . . . .	309
Urban District Councils . . . . .	572
Rural District Councils . . . . .	475
Port Health Authorities . . . . .	24
Joint Hospital Boards and Committees . . . . .	212
Joint Sewerage Boards and Committees . . . . .	40
Joint Water Boards and Committees . . . . .	56
Local Education Authorities . . . . .	271
Public Assistance Authorities . . . . .	145
Parish Councils (approximately) . . . . .	7,000
Parish Meetings without Councils (approximately) . . . . .	4,100
Assessment Committees . . . . .	342
Catchment Boards . . . . .	47
Local Sea Fisheries Committees . . . . .	11
Burial Boards . . . . .	63

## APPENDIX V

### THE RATING RELIEF FORMULA

QUESTIONS having arisen as to the precise form of the algebraic formula—of which paragraph 23 of the White Paper, "Proposals for the Reform in Local Government and in the Financial Relations between the Exchequer and the Local Authorities" (Cmd. 3134) is a summary—the Minister of Health has given the following information in the course of a reply to an inquiry by Miss Susan Lawrence.

The formula is as follows—

Let  $p$  = the population of a county in the standard year as estimated by the Registrar-General.

Let  $c$  = 50, or the number of children under five years of age per 1,000 of the population, whichever is the greater.

Let  $a$  = 10, or the rateable value in £ per head of the population according to the valuation list in force on 1st October, 1929, whichever is the less.

Let  $u$  = 1.5, or the percentage of unemployed men calculated as explained in Cmd. 3134, whichever is the greater.

Let  $m$  = the number of persons per mile of public road.

Then (1) if  $m$  is greater than or equal to 100, the weighted population is

$$p \left( 1 + \frac{c-50}{50} + \frac{10-a}{10} \right) \left( 1 + \frac{u-1.5}{10} + \frac{50}{m} \right)$$

(2) if  $m$  is less than 100 the weighted population is

$$p \left( 1 + \frac{c-50}{50} + \frac{10-a}{10} \right) \left( 1 + \frac{u-1.5}{10} + \frac{200-m}{200} \right)$$

In the case of London and the county boroughs, the last term in the second bracket is always taken as zero, as there is no weighting for low density of population in those cases. The following example illustrates the working of the formula. The figures are those for the Administrative County of Durham (*vide* page 32 of Cmd. 3134)—

#### EXAMPLE. Elements of the Formula

(a) Number of children under five years of age per 1,000 of the population	113
(b) Estimated rateable value per head of population when derating is in operation	£2.95
(c) Percentage of population represented by number of unemployed insured men (estimated average of three years)	5.2
(d) Estimated population per mile of public roads	444
(e) Estimated population (in 1926)	996,700

## CALCULATION OF WEIGHTED POPULATION

(i) Estimated actual population . . . . .	996,700
(ii) Increase for children of 126 per cent (113 exceeds 50 by 63, which is 126 per cent of 50) . . . . .	1,255,842
(iii) Increase for low rateable value of 70.5 per cent (£2.95 is £7.05 below £10, and 7.05 is 70.5 per cent of 10) . . . . .	702,674
	<hr/> 2,955,216
The increased population of 2,955,216 is further weighted by	
(iv) a percentage of 37 for unemployment (5.2 exceeds 1.5 by 3.7, and ten times 3.7 is 37) . . . . .	1,093,430
(v) a percentage of 11.3 for low density of population (444 ex- ceeds 100); the percentage increase is therefore $\frac{50}{444} \times 100$ , i.e. 11.3 . . . . .	333,939
Total weighted population . . . . .	<hr/> 4,382,585

For the First Fixed Grant period a grant of 31.35 pence per head of a total weighted population of 4,382,585 is equivalent to a grant of 137.8 pence per head of an actual population of 996,700.

NOTE. This formula will now require amendment for the added "weighting" to be given in respect of 10 per cent of unemployed insured women, and in respect of the changes introduced by the Local Government (Financial Provisions) Act, 1937, in respect of super-weighting for unemployment and low density; but the principle of the formula remains the same.

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BRAY, R. A. *Boy Labour and Apprenticeship.*

Constable (1914). 5s. net.

An excellent work by a well-known social worker and member of the London County Council.

BRIGGS, ISAAC G. *Reformatory Reform.*

Longmans (1924). O.P.

BULLOCK, E. J. *The Law as to Children and Young Persons.*

Stevens (1933). 15s. net.

With a Foreword by the Rt. Hon. The Viscount Buckmaster, G.C.V.O.

CLARKE, J. J. *Social Administration.*

Pitman (1946). Fourth Edition. 25s. net.

Contains the provisions of the Children and Young Persons Act, 1933, as amended. Bibliography.

ELKIN, W. A. *English Juvenile Courts.* Routledge (1938). 12s. 6d.

FREEMAN, ARNOLD. *Boy Labour and Life: the Manufacture of Inefficiency.*

King (1914). O.P.

First-hand investigations into conditions of boy labour in Birmingham. Outlines lives and influences shaping future of 71 boys, and suggests remedy. Bibliography.

GREENWOOD, ARTHUR. *Juvenile Labour Exchanges and After Care.*

King (1911). O.P.

Discusses juvenile labour problem, and outlines scheme for its solution by co-ordination and co-operation of education authorities, Labour Exchanges, and voluntary agencies. Bibliography.

HALL, W. CLARKE. *Children's Courts.*

Allen & Unwin (1926). 7s. 6d. net.

Certain portions of the author's earlier work, *The State and the Child*, have been retained, but most of the book is new and based on the wider experience and deeper understanding of the causes that culminate in juvenile delinquency.

HALL, SIR W. CLARKE, and HALL, JUSTIN CLARKE. *The Law of Adoption and Guardianship of Infants.*

Butterworth (1928). 10s. 6d. net.

Contains the Adoption of Children Act, 1926, fully annotated, the Guardianship of Infants Act, 1925, the Legitimacy Act, 1926, and the Rules made thereunder.

IKIN, A. E. *The Children and Young Persons Act, 1933.*

Pitman (1933). 10s. 6d. net.

The most comprehensive and detailed guide to the Act available. Bibliography.

INTERNATIONAL HANDBOOK OF CHILD CARE AND PROTECTION. *Compiled from Official Sources by* EDWARD FULLER.

Longmans. 10s. 6d. net.

Being a Record of State and Voluntary Effort for the Welfare of the child.

JONES and BELLOT. *Law of Children and Young Persons.*

Butterworth (1909). 12s. 6d.

This work is a more technical treatise on the subject, and is of extreme value to officials and others engaged among the adolescent.

MESTON, D. *The Children and Young Persons Act, 1933.*

Sweet & Maxwell, Ltd. and Stevens & Sons (1933). 7s. 6d. net.

Contains an Introduction and Notes incorporating Enactments, Rules, Regulations, and Index.

PEPLER, DOUGLAS. *The Care Committee, the Child, and the Parent.*

Constable (1912). 2s. 6d. net.

Historical account of provision of free meals for poor children, and an able treatment of Care Committees, their future, and the relative spheres of voluntary and official workers.

WATSON, J. A. F. *The Magistrate and the Child.*

Cope (1942). 10s. net.

## PUBLIC ASSISTANCE

ARCHBOLD'S *Poor Law.*

Edited by Woodward, E. G.

Butterworth (1930). 92s. 6d.

BAILWARD, W. A. *The Slippery Slope.*

Murray (1920). 10s. 6d. net.

A collection of essays on Poor Law administration and other social problems by one who was well known as a high authority on these matters.

CLARKE, J. J. *Public Assistance and Unemployment Assistance.*

Pitman (1937). Second Edition. 10s. 6d. net.

The history and development of the Poor Laws in England and Scotland for students and administrators. It contains also Unemployment Assistance, Mental Deficiency, and Mental Treatment.

CLARKE, J. J. *Public Assistance, Administration and Cost.*

Gee (1926). 6d. net.

Written for students preparing for the examinations of the Institute of Municipal Treasurers and Accountants (Incorporated). Charts and Bibliography.

DAVEY'S *Poor Law Statutes and Orders.*

Stevens (1930). Second Edition. 30s. net.

A complete code of Poor Law Statutes and Orders, with a well-developed system of indexes and cross-references.

DAVEY'S *Poor Law Settlement and Removal.*

Stevens (1925). Third Edition. 15s. net.

DEARNLEY, T. H. *Public Assistance Administration and Accounts.*

Hadden, Best & Co., Ltd. (1931). 15s. net.

Including the Mental Treatment Act, 1930, and the "Needs Test" for Unemployment Insurance Transitional Payments pursuant to the National Economy Act, 1931.

DRAGE, GEOFFREY. *The State and the Poor.*

Collins (1914). O.P.

A carefully written work by a recognized authority on the English Poor Laws.

EXLEY, C. H. *The Guide to Poor Relief.*

Meek, Thomas & Co. Ltd. (1935). Fourth Edition. 12s. 6d. net.

Intended primarily for students taking the relieving officer's certificate of the Poor Law Examinations Board.

FOWLE, T. W. *The Poor Law.*

Macmillan; English Citizen Series (1906). O.P.

Very reliable. Deals with principles, institutions, history, and administration of the Poor Law.

GLEN, R. A. *Poor Law Act, 1930.*

Eyre & Spottiswoode (1931). 12s. 6d. net.

The official Text of the Act with an Introduction.

GLEN's *Law Relating to Public Assistance.*

R. A. Glen assisted by E. Bright Ashford and A. P. L. Glen.

Law and Local Government Publications (1933). 30s.

A comprehensive survey of the Poor Law Act, 1930, with a compact system of notes, cross references, and a good Index.

HADDEN's *Relieving Officer's Handbook.*

Edited by JOHN MOSS.

Hadden, Best & Co., Ltd. (1939). Seventh Edition. 15s.

The Standard Work for Relieving Officers and Students.

JENNINGS, W. I. *The Poor Law Code.*

Knight (1937). Second Edition. 11s. 6d. net.

Contains the Poor Law Act, 1930, fully annotated; the various Orders which go to complete the Code; a summary of the making of the Poor Law, and a comprehensive Index.

LIDBETTER, E. J. *Settlement and Removal.*

Law and Local Government Publications Ltd. (1937). Second Edition. 7s.

A statement of the law as it now stands with its application to current cases.

NICHOLLS, SIR GEORGE, and MACKAY, THOMAS. *A History of the English Poor Law.*

King (1912). 3 vols. O.P.

The standard work on the subject. First two volumes, by Sir George Nicholls, and the third volume by Thomas Mackay.

*Report of the Inter-departmental Committee on Public Assistance Administration.* (Cmd. 2011.)

H.M. Stationery Office (1923). 4s. net.

*Report of the Royal Commission on Poor Law, 1834.*

There have been several reprints of this, but probably the best is that issued by P. S. King, price 1s. 8d., also H.M. Stationery Office.

*Report of the Royal Commission on Poor Law and Relief of Distress.*

1909 (Cd. 4499). H.M. Stationery Office. 5s. 6d. net.

A mine of useful historical and statistical information.

THE POOR LAW ORDERS, *with an Introduction and Explanatory Notes.*

Law and Local Government Publications Ltd. (1932). 5s. 6d. net.

Contains the 1930 Orders together with the Ministry of Health Circulars and Memoranda thereon.

WEBB, SIDNEY and BEATRICE. *English Poor Law Policy.*

Longmans (1913). O.P.

A history of the Poor Law from 1834 to the Royal Commission of 1905-9, tracing the gradual development of policy over three-quarters of a century.

- WEBB, SIDNEY and BEATRICE. *The Break-up of the Poor Law*.  
Longmans (1911). 7s. 6d. net.  
Being Part I of the Minority Report of the Poor Law Commission.
- WEBB, SIDNEY and BEATRICE. *The Prevention of Destitution*.  
Longmans (1920). O.P.  
An attempt to set forth a constructive policy with a view to getting rid of the great bulk of involuntary destitution.
- WEBB, SIDNEY and BEATRICE. *The Public Organization of the Labour Market*.  
Longmans (1911). 5s. net.  
Being Part II of the Minority Report of the Poor Law Commission.
- WEBB, SIDNEY and BEATRICE. *English Poor Law History*.  
Longmans.  
Part I (1927), *The Old Poor Law*. 21s. net.  
Part II (1929), *The Last Hundred Years*. In two volumes. 36s. net.  
An admirable history of the Poor Law with a compendious summary of its principles.

# MENTAL TREATMENT

- CLARKE J. J. *Public Assistance and Unemployment Assistance*.  
Pitman (1937). Second Edition. 10s. 6d. net.  
Contains Chapters on Mental Treatment and Mental Deficiency.  
Bibliography.
- CROSSMAN, G., and WONTNER, J. J. *A Guide to Lunacy Practice*.  
Pitman (1934). 10s. 6d. net.  
Explains clearly the details of lunacy practice and provides an authoritative source of information that is indispensable to all concerned with this subject.
- DAVEY's *Mental Deficiency*.  
Stevens (1914). Second Edition. 12s. 6d. net.
- GRAHAM, J. EDWARD. *The Mental Deficiency and Lunacy (Scotland) Act, 1913*.  
W. Hodge & Co., Ltd. (1914). 12s. 6d. net.
- LAPAGE, C. P. *Feeble-mindedness in Children of School Age*.  
Manchester University Press (1920). Second Edition. 10s. 6d. net.  
With an Appendix on Treatment and Training, by Mary Dendy, M.A., Commissioner of the Board of Control.
- LIDBETTER, L. J. *Lunacy and Mental Treatment Acts, 1890-1930*.  
Law and Local Government Publications, Ltd. (1933). 6s. 9d.  
Being a statement of the law as it now stands.
- LITHIBY, SIR JOHN. *The Law Relating to Lunacy and Mental Deficiency*.  
Knight (1914). 25s. net.  
The Fourth Edition of *Fry's Lunacy Laws*, edited by Sir John Lithiby.
- MILLS, G. E., and POYSER, A. H. R. W. *Lunacy Practice*.  
Butterworth (1934). 42s. net.  
Deals with management of estates in lunacy, appointment of receivers, and other important points.
- WORMALD, JOHN, and SAMUEL WORMALD. *A Guide to the Mental Deficiency Act, 1913*.  
King (1914). 5s. net.  
This is a useful exposition of the Act, and is of extreme value to local administrators and social workers.

## UNEMPLOYMENT

BEVERIDGE, W. H. *Unemployment : A Problem of Industry* (1909 and 1930).

Longmans (1930). 21s. net.

A Second Edition of the standard book on the subject. Records principal facts, and analyses causes of unemployment. Discusses past remedies and principles of future policy. Bibliography.

CLARKE, J. J. *Public Assistance and Unemployment Assistance.*

Pitman (1937). Second Edition, 10s. 6d. net.

Contains the provisions of the Unemployment Act, 1934, upon which was based the scheme of the Assistance Board.

DOUGLAS, P., and DIRECTOR, A. *The Problem of Unemployment.*

Allen & Unwin (1931). 17s. 6d. net.

A balanced survey of causes and suggested remedies.

HERBERT, S. *Can Land Settlement Solve Unemployment ?*

Allen & Unwin (1935). 3s. 6d.

Presents a detailed and practical basis for land settlement.

HOBSON, JOHN, A. *The Economics of Unemployment.*

Allen & Unwin (1931). Revised Second Edition, Third Impression. 4s. 6d. net.

JEWKES, J., and WINTERBOTTOM, A. *Juvenile Unemployment.*

Allen & Unwin (1935). 5s. net.

A concise survey. Describes the results of special investigations carried out in Lancashire and discusses the possible remedies put forward.

KEYNES, J. M., and OTHERS. *The World Economic Crisis and the Way of Escape.*

Allen & Unwin (1932). Halley Stewart Lecture. Third Impression. 4s. 6d. net.

KNOOP, D. *The Riddle of Unemployment.*

Macmillan (1931). 4s. 6d.

An explanation in clear terms of the present-day position.

PIGOU, A. C. *The Theory of Unemployment.*

Macmillan (1933). 15s. net.

The purpose of this book is to analyse the principal factors upon which unemployment and its fluctuations depend, and to display their complex interactions.

SALTER, SIR A. *Recovery.*

Bell (1932). 10s. 6d. net: Cheap Edition (1933), 5s.

An examination of the world's problems and a programme of action in summary. The most important contribution yet published.

STEVENSON, E. F. *Unemployment Relief: The Basic Problem.*

Allen & Unwin (1934). 6s. net.

A survey of the problem in its historical and social perspectives.



## NATIONAL UNEMPLOYMENT INSURANCE

CLARKE, J. J. *Social Administration.*

Pitman (1946). Fourth Edition. 25s. net.

Contains several important chapters on the present machinery of Unemployment Insurance.

COHEN, J. L. *Insurance Against Unemployment.*

King (1921). O.P.

A comprehensive work, with special reference to British and American conditions. Parts I and IV deal with the Problem: Parts II and III with the Ghent and British Systems of Unemployment Insurance.

COHEN, J. L. *Insurance by Industry Examined.*

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An analysis of the various schemes which have been brought forward on this subject. Bibliography.

COHEN, J. L. *Social Insurance Unified.*

King (1924). 5s.

Discusses the pros and cons of a unified system of social insurance.

COHEN, PERCY. *The British System of Social Insurance.*

With an Introduction by The Right Hon. Neville Chamberlain, M.P.

Allan (1932). 12s. 6d. net.

A comprehensive survey of the whole field of Social Insurance. Bibliography.

EMMERSON and LASCELLES. *A Guide to the Unemployment Insurance Acts.*

Longmans (1939). Fifth Edition. 6s. net.

A concise account of the Unemployment Insurance Scheme. The edition incorporates the amendments to the Scheme made by the Unemployment Acts, 1936-39, and by Orders and Regulations.

The text is based upon the Unemployment Insurance Act, 1935, which consolidated earlier legislation. Extracts are given from the Act, and from Regulations and Orders made by the Minister of Labour.

GILSON, MARY B. *Unemployment Insurance in Great Britain.*

Allen & Unwin (1931). 21s. net.

The second volume in a series on unemployment insurance the object of which is to enlighten the American public by examining the experiences of other countries which have installed insurance. Bibliography.

Royal Commission on Unemployment Insurance.

H.M. Stationery Office.

First Report (1931), Cmd. 3872. 1s.

Final Report (1932), Cmd. 4185. 7s. 6d. net.

Guide and Index to Evidence. 5s. 6d. net.

SCHLOSS, D. S. *Insurance against Unemployment.*

King (1909). O.P.

A concise account of what has been done by other nations, and sets forth in detail the foreign legislation on the subject.

## NATIONAL HEALTH INSURANCE

AGGS, W. H. *National Insurance Act, 1924.*

Sweet & Maxwell and Stevens & Sons (1925). 6s. net.

Contains the text of the Act with Introductions, Notes, and Index.

## APPROVED SOCIETIES HANDBOOK.

H.M. Stationery Office (1933). Paper covers, 2s. 6d. net. Quarter bound, 3s. net.

A revised handbook for the guidance of approved societies in their administration of benefits under the National Health Insurance Acts.

CARR, A. S. COMYNS; GARNETT, W. H. STEWART; and TAYLOR, J. H., M.B. *National Insurance.* Preface by Rt. Hon. D. Lloyd George. Macmillan (1912). O.P.

The best exposition of the Act. Contains chapters on Position of Employers, Insured Persons, Friendly Societies, Local Authorities, Medical Profession, Finance, and Public Health.

CLARKE, J. J. *Social Administration.*

Pitman (1945). Fourth Edition. 25s. net.

Contains the present machinery and the proposals of the National Insurance Bill. Bibliography.

COHEN, PERCY. *The British System of Social Insurance.*

Allan (1931). 12s. 6d. net.

A comprehensive survey of the whole field of Social Insurance. Bibliography.

FOSTER, W. J., and TAYLOR F. G. *National Health Insurance.*

Pitman (1938). Third Edition. 10s. 6d. net.

A simple explanation of the Acts and Regulations now in force.

ROBERTS, F. *Guide to Industrial and Social Legislation.*

Gee (1931). 10s. 6d. net.

Outlines the industrial, commercial, and social legislation affecting the public in general and local government officers in particular.

## OLD-AGE PENSIONS

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Allan (1931). 12s. 6d. net.

A comprehensive survey of the whole field of Social Insurance, including Widows' and Orphans' Pensions and Old Age Pensions. Bibliography.

HOARE, H. J. *Old-Age Pensions.*

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#### HOBSON, JOHN A. *Problems of Poverty*.

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A detailed study of social and economic conditions of wage-earning classes of York. Contains a valuable analysis of the immediate causes of poverty.

#### ROWNTREE, B. S. (Ed.). *Betting and Gambling : A National Evil*.

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A series of papers on various aspects of the subject, by competent writers, giving considerable information and offering suggestions. Bibliography.

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ADKIN, B. W. *Local Taxation*.

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Faraday, P. M. and Comyns-Carr, A. S.  
The Estates Gazette (1934), Fourth Edition. 70s. net.  
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- KONSTAM, E. M. *The Modern Law of Rating (Outside London).*  
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Butterworth (1929). 21s.  
A continuation of the above-mentioned work.
- KONSTAM, E. M. and ROWE, M. E. *Railway Rating: Law and Procedure.*  
Butterworth (1933). 25s.  
Written in collaboration with Michael E. Rowe. Deals with the Railways (Valuation for Rating) Act, 1930.
- MACKENZIE'S *Rating and Valuation Officers' Handbook.*  
Edited by Phillips, F. J.  
Butterworth (1932). Tenth Edition. 11s. 6d. net.  
In this edition a new chapter was added on the General Rate.
- PARKER, C. G. *A Handbook of De-Rating Cases.*  
The Estates Gazette, Ltd. (1932). 12s. net.  
Incorporating the Statutes, Ministerial Memoranda, and Statutory and Provisional Rules and Orders, Forms, etc.
- RYDE, W. C. *Law and Practice of Rating.*  
Edited by E. M. Konstam and M. E. Rowe.  
Butterworth (1940). Seventh Edition. 70s. net.  
The principal work on this subject.
- SHEPPARD, P. *A Précis of the Rating and Valuation Acts, 1925-1932.*  
Elsworth, Ltd. (1932). Eighth Edition. 6s. 6d.  
A useful work to indicate to officers what statistics they should regard as important.
- TERRY, G. P. WARNER. *The Rating and Valuation Acts, 1925 to 1932.*  
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Together with the subsisting operative enactments from 1601 and the Metropolitan Rate Codes. This publication brings up to date the two previous books on Rating and Valuation by the same author.

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A guide to the principles of valuation of land and buildings, etc., for various purposes.

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